Sexual Offences against
Children in Canada: summary.

SEXUAL OFFENCES AGAINST CHILDREN IN CANADA:

SUMMARY

Canada

SEXUAL OFFENCES AGAINST CHILDREN IN CANADA:

SUMMARY

of the
Report of the Committee on Sexual
Offences Against Children and Youths
appointed by
The Minister of Justice & Attorney General of Canada
The Minister of National Health and Welfare
Government of Canada
1984

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Committee on Sexual Offences Against Children and Youths

August, 1984

The Honourable Donald J. Johnston
P.C., M.P.
Minister of Justice and
Attorney General of Canada

The Honourable Monique Bégin
P.C., M.P.
Minister of National Health
and Welfare

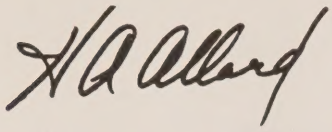
Dear Mr. Johnston and Madame Bégin:

In accordance with the Terms of Reference assigned on February 16, 1981, we have inquired into and report upon the "prevalence in Canada of sexual offences against children and youths" and "the problems of juvenile prostitution and the exploitation of young persons for pornographic purposes".

In undertaking our mandate, we have received valuable assistance and support across Canada from all levels of government, the helping professions and many community and voluntary associations. Our findings show that vital changes must be made in order to afford Canadian children and youths better protection from all forms of child sexual abuse and exploitation.

The actions we propose provide a rational and co-ordinated framework whose implementation would assure a level of protection that is essential for young persons to have against sexual offences. In recognition of the child's vulnerabilities and special needs, efforts to provide better assistance and protection for sexually abused children and youths must be assigned high priority by the Government of Canada. These activities must be undertaken on a co-operative basis with the provinces and non-governmental organizations, and must be strongly co-ordinated.

We respectfully submit our recommendations. We do so unanimously.



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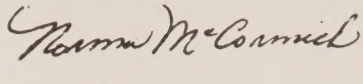

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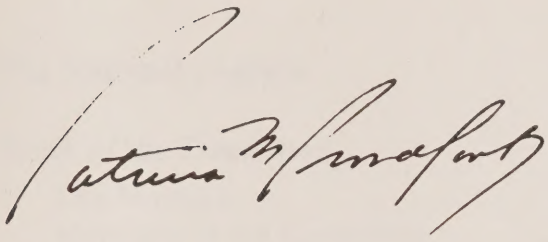

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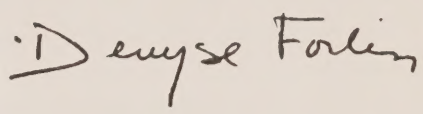

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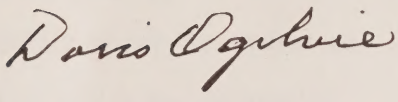

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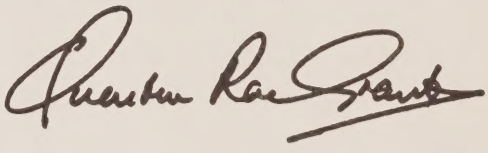

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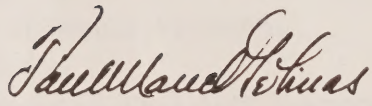

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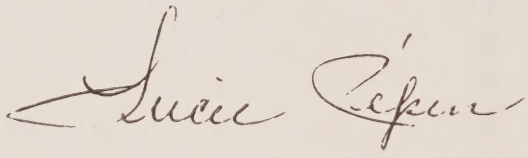

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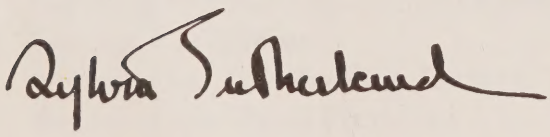

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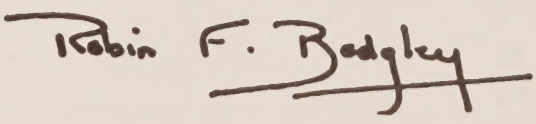

Robin F. Badgley
Chairman

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The National Concern

Persons who have been sexually abused as children and youths have told us of their anguish and sense of helplessness, feelings intensified by their not knowing how they might have sought appropriate help. Resulting from our work, we have been profoundly moved by their betrayed hopes and their suffering. Many of these victims have been scarred for life with uncertainty, fear and despair. They have asked clearly "Can you help?". Canadians cannot evade this appeal nor think wishfully that this situation will somehow right itself without direct and constructive action being taken.

The Committee's mandate was to determine the adequacy of the laws and other means used by the community in providing protection for children against sexual offences and to make recommendations for improving their protection. Our principal conclusions are that these crimes occur extensively and that the protection now afforded these young victims by the law and the public services is inadequate. In reaching our conclusions, we have done so on the basis of a review of the Canadian law on sexual offences which has been coupled with a fact-finding assessment of the present situation of the sexually abused child. It is in light of this assessment that each of our major recommendations rests upon a substantial body of evidence.

Our Report raises issues which until recently have seldom been discussed candidly and incisively. While child sexual abuse is only one of many problems facing Canadians, it cuts across many facets of the nation's legal framework and the public and private services. There are no simple or instant solutions. We believe that none can be realized without a strong commitment to develop a comprehensive and co-ordinated national approach involving all levels of government and non-governmental agencies.

Child sexual abuse is a largely hidden yet pervasive tragedy that has damaged the lives of tens of thousands of Canadian children and youths. For most of them, their needs remain unexpressed and unmet. These silent victims — and there are substantial numbers of them — are often those in greatest need of care and help. Only a few young victims of sexual offences seek assistance from the helping services and there are sharp disparities in the types and adequacy of the services provided for them in different parts of the country. From its research, the Committee found that:

- At sometime during their lives, about one in two females and one in three males have been victims of one or more unwanted sexual acts. These acts include: being exposed to; being sexually threatened; being touched on a sexual part of the body; and attempts to assault or being sexually assaulted.

- About four in five of these unwanted sexual acts had been first committed against these persons when they were children or youths.
- Four in 100 of young females have been raped.
- Two in 100 of young persons have experienced attempts or actual acts of unwanted anal penetration by a penis, or by means of objects or fingers.
- Acts of exposure constituted the largest single category of sexual offences committed against children. Cases were documented where such acts were followed by sexual assault.
- Three in five sexually abused children had been threatened or physically coerced by their assailants. Young victims are as likely to be threatened or forced to engage in sexual acts by persons relatively close in age as by older persons.
- Few young victims were physically injured; substantially more suffered emotional harms.
- About one in four assailants is a family member or a person in a position of trust; about half are friends or acquaintances; and about one in six is a stranger.
- Virtually all assailants are males; one in 100 is a female.
- A majority of victims or their families do not seek assistance from public services. When they do, they turn most often to the police and doctors.
- Over two in five of all sexual assault homicides are committed against children age 15 and younger. Children are victims of three in four convicted sexual offenders found to be dangerous on sentencing by courts.

What is now lacking is any widely agreed upon policy providing for an orderly, comprehensive and rational development and provision of services for the assistance and care of sexually abused children. The obstacles that now hinder the achievement of better protection for sexually abused children are not insurmountable. While in the short run they represent serious barriers to realizing this aim, many of these problems can be resolved by an energetic and joint endeavour involving all levels of government working in full co-operation with non-governmental organizations.

Canadians are deeply concerned about the need to provide better protection for sexually abused and exploited children and youths. This strongly held concern is national in scope. It cuts across all social, religious and political boundaries. It encompasses all forms of sexual abuse of the child, whether this involves sexual assault, juvenile prostitution or the making of child pornography.

Parliament and the legislatures of the nation are essential anvils in shaping compelling priorities and in providing leadership concerning the direction to be taken in achieving them. In relation to the problem of child sexual abuse, we believe it is the proper responsibility of government to establish clear social and penal policies whereby better protection can be provided and which through time may serve to reduce the occurrence of these offences. It is clear

that these policies cannot be developed in isolation by any one level of government. Their success will require leadership, co-ordination and a firm political commitment to assign sufficient resources.

Our work has shown us the complex dimensions of this deeply rooted tragedy. We know that they are — and will be — difficult to resolve. We know that adequate assistance and protection have not yet been achieved. And we know that we must do better and that as a nation we have the means to do so.

The answer to the appeal "Can you help?" must be to seek to serve in exemplary fashion the special needs and vulnerabilities of sexually abused children. We believe that it is only by joint and continued endeavour that Canadians will be able to ensure the dignity and worth of our children who are victims of sexual offences and to fulfill our unshakable purpose of preserving that dignity.

Work of the Committee

The Mandate

The Minister of Justice and the Minister of National Health and Welfare announced the establishment of the *Committee on Sexual Offences Against Children and Youths* on December 19, 1980. The Committee was asked to conduct a national fact-finding study of sexual offences against children and youths and to recommend how young victims could be better protected by the law and the helping services.

The Committee was assigned its specific Terms of Reference (given in the appendix to this Summary) when the appointment of Members was announced on February 16, 1981. At that time, the Committee was requested "to recommend improvements in laws for the protection of young persons from sexual abuse and exploitation". The establishment of the Committee was complementary to the announcement by the Minister of Justice of proposals containing amendments to sexual offences in the *Criminal Code*. The Minister's statement noted that "further amendments to the *Criminal Code* will be considered, if necessary, following receipt of the report and recommendations of the Committee".

Among the issues assigned to the Committee were:

- To document the extent of child sexual abuse and recommend how young victims could be better protected.
- To consider how juvenile prostitution could be prevented.
- To determine the extent of the making of child pornography and examine the accessibility of pornography to children.

In reviewing its Terms of Reference, the Committee assessed available sources of information, identified issues for which research information was required and designed studies to be undertaken. Because of the scope of the research required, following its third meeting the Committee requested that its term of operation be extended to three years. This request was approved. During the course of its work, the Committee held 14 meetings.

In addition to undertaking its research, the Committee met with concerned groups and received 253 written briefs and submissions. The scope of the Committee's mandate required that it seek information concerning sexual

offences against children from all parts of the country. In this regard, the Committee's work was directly supported by voluntary organizations, different federal, provincial and municipal public services, knowledgeable administrators and experienced professionals. The nature of the remarkable contribution made by many persons and services is attested to by the comprehensive information which was made available to the Committee from many different sources. Without this valuable assistance, generously given, there is no doubt that the intent of the study could not have been realized.

Members of the Committee

In announcing the establishment of the Committee, the Ministers' statement noted that in addition to appointing laymen, its composition was to include "representatives from the fields of sociology, law, medicine, nursing and social welfare". The Members of the Committee were informed that "subject to its Terms of Reference, the Committee is to operate independently". Members of the Committee were:

Herbert A. Allard, B.A., B.S.W., Senior Judge, Family Division, the Provincial Court of Alberta.

Denyse Fortin, B.A., L.L.L., Director of Continuing Legal Education, Quebec Board of Notaries. Visiting Professor, Faculty of Law, University of Montreal. Member, Committee on the Operation of the Abortion Law, Government of Canada (1975-77).

Paul-Marcel Gélinas, B.A., M.S.W., Director General, Canadian Mental Health Association, Quebec Division. General Secretary, International Year of the Child (Quebec, 1979).

Elizabeth S. Hillman, M.D., F.R.C.P.(C)., Professor of Pediatrics, Faculty of Medicine, Memorial University President, Medical Council of Canada (1981-82).*

Norma McCormick, B.A., University of Manitoba. Director, Day Nursery, Health Sciences Centre, Winnipeg (-1982). Child and Family Services Planner (1982-84). Administrator, Manitoba Adolescent Treatment Centre (1984-).

Doris Ogilvie, B.A., LL.B., LL.D., (Hon.)., Former Deputy Judge of the Juvenile Court and Provincial Court of New Brunswick. Chairperson, International Year of the Child (1979). Member, Royal Commission on the Status of Women (1967-70).

Lucie Pépin, R.N., President, Canadian Advisory Council on the Status of Women. National Co-ordinator of Clinical Research, World Health Organization - Collaborating Centre, Canadian Committee for Fertility Research.

Patricia M. Proudfoot, B.A., LL.B., LL.D., (Hon.)., The Supreme Court of British Columbia and Deputy Judge of the Supreme Court of the Yukon Territory. Commissioner, British Columbia Royal Commission on the Incarceration of Female Offenders (1978).

Quentin A. Rae-Grant, M.B., Ch.B., D.P.M., F.R.C. Psych., F.R.C.P.(C)., Psychiatrist-in-Chief, Hospital for Sick Children. Professor and Vice-Chairman, Department of Psychiatry, and Chairman, Division of Child Psychiatry, Faculty of Medicine, University of Toronto. President, Canadian Psychiatric Association (1982-83).

Sylvia Sutherland, Dipl. A.A., B.A., Commentator, CHEX Radio 98 TV 12, (Peterborough). Member, Canadian Delegation 35th General Assembly, United Nations (1980-81). Vice-President, United Nations Association of Canada (1982-).

*Participated in the work of the Committee until October, 1982. Resigned to assume academic responsibilities in Uganda.

Robin F. Badgley (Chairman), Professor of Behavioural Science, Faculty of Medicine, (cross-appointed Professor of Sociology), University of Toronto. Member, Advisory Committee on Medical Research, World Health Organization/Pan American Health Organization (1977-84).

Officials from the Department of National Health and Welfare and the Department of Justice who served respectively as Senior Medical Advisor and Senior Counsel to the Committee were:

Robert H. Lennox, M.D., D.T.M., M.P.H., F.R.C.P.(C), Chief, Child and Adult Health, Department of National Health and Welfare (1968-1982). Medical Advisor, International Health Affairs, Department of National Health and Welfare (1982-).

Bernard Starkman, B.A., LL.B., Dip. de Dr. Comp., LL.M., of the Bars of Ontario and Manitoba. Special Advisor, Medical-Legal Policy, Policy Planning and Criminal Law Amendments, Department of Justice. Sessional Professor of Law, Faculty of Law (Common Law Section), University of Ottawa.

The Committee was assisted by a remarkably capable administrative and research staff. The former included:

Mieko Ise
Sandra Nahon, Administrator
June Rilett

The Senior Research Associates to the Committee were responsible for the mounting and undertaking of the research that was conducted.

Kevin Chaisson, (computer programming, statistical analysis).

Elisabeth Hurd, B.A., M.S.W., (National Child Protection Survey).

Phyllis M. Jensen, R.N., B.A., M.A. (computer programming, statistical analysis).

Kristina J. Kijewski, B.Sc., M.A. (National Hospital Survey and National Corrections Survey).

Stephen J. Kloepfer, B.A., LL.B., LL.M., Director of Legal Research. (legal review, design of legally pertinent questions in the national surveys, and legal analysis of the findings obtained).

Wendy Leaver, B.S.W. (National Police Force Survey and National Survey of Juvenile Prostitution. Sergeant, on leave of absence, Metropolitan Toronto Police Force).

Brian M. Levine, B.A. (National Child Protection Survey, National Surveys on the Production, Distribution, Importation and Seizures of Pornography and National Survey of Juvenile Prostitution).

Peter Petruzzellis (National Surveys on the Production, Distribution, Importation and Seizures of Pornography. Sergeant, on leave of absence, Metropolitan Toronto Police Force).

Committee's Approach to Research

Throughout his career, the legal philosopher Roscoe Pound distinguished between what he called 'the law in the books' and 'the law in action'. This distinction between what the law says and how the law actually operates is rele-

vant to the Committee's work. Canadian law is at many points sufficiently elastic to allow for police, child protection, medical, prosecutorial and judicial discretion in dealing with sexual assailants and their victims. The exercise of this discretion is influenced by both social and legal considerations.

The challenge of research dealing with crime, in this instance sexual offences against children and youths, is two-fold. First, such research must seek to identify as objectively as possible those facts which, whether legally relevant in the formal sense or not, may influence the way in which the helping and enforcement services deal with the problem. The second challenge is to test, by means of collecting pertinent information, the validity of the assumptions on which particular legal doctrines appear to be based.

In undertaking its research, the Committee grounded its approach upon a number of assumptions about how information pertaining to its mandate could be most effectively and validly obtained. Foremost among these assumptions was the Committee's recognition of the need to anchor its research on the foundation of the law and to seek directly from primary sources information pertinent to these issues. In seeking to learn about the experience of victims of sexual offences, the Committee believed that it was essential to obtain such information directly from persons who had experienced unwanted sexual acts. While recognizing that these are intensely personal concerns, the Committee believed that persons who had been victims would be willing to provide such information if given firm assurance about the confidentiality of the replies received.

Children who are victims of sexual offences may turn or become known to a number of helping services, each of which provides important but different types of assistance. With respect to these services, the Committee assumed that no single source should be relied upon as the exclusive basis upon which to derive general findings about the extent and nature of sexual offences against children.

There is a paradox in relation to information about criminals and victims of crime in Canada. While there is little systematic documentation about their situation and experience, there are rich veins of potential information which have seldom been drawn upon in this regard. These largely untapped sources are the files and records of public services, notably, those of the police, hospitals, child protection and correctional services which contain detailed findings about child sexual abuse. Little of this information surfaces in the form of official agency or service statistics, with the result that it is often assumed that such information is not available or may not exist.

In order to draw directly upon the basic information available to these services and to provide a complementary assessment of the types of assistance and protection afforded victims, the Committee undertook several national surveys of cases of child sexual abuse known to public services. Despite the fact that the Committee was federally appointed, and in some instances was seeking information on matters largely under provincial jurisdiction, without exception

in undertaking these surveys, the Committee received invaluable co-operation from each of the main public services involved across Canada.

In considering the reform of the law concerning socially and legally complex issues, such as those set by the Committee's mandate, the Committee believes that it is not only feasible but mandatory to seek the full participation of the relevant public services within a firm framework of federal-provincial co-operation. Issues of this kind transcend institutional and political boundaries. If their dimensions are to be fully understood and acted upon in the provision of services and amendment to the law, then all pertinent resources must be marshalled to attain these purposes.

Reflecting the multi-faceted dimensions of its Terms of Reference, each phase of the Committee's study was undertaken on the basis of an interdisciplinary perspective with respect to these issues. While the virtues of teamwork may be legion, its practice in relation to undertaking research involving the close collaboration of different disciplines may be a different matter. Each discipline has clothed certain words which are in general usage with special connotations and different ideas abound about the meaning and purpose of research.

In the Committee's experience, adapting to an interdisciplinary perspective involving close collaboration in undertaking research is neither easy nor readily accomplished. The integration of different perspectives in this study developed as a result of much patience and tolerance between Members with respect to how and why certain information should or should not be obtained. In retrospect, the Committee appreciates the unusual opportunity afforded its Members to work together and to debate, often staunchly, issues from different disciplinary perspectives. One by-product of this work has been the Committee's realization, unanimously endorsed, that in undertaking the review of complex social and legal issues, it is essential that these questions be considered from a balanced and integrated interdisciplinary perspective. No discipline, by itself, has the requisite scope of conceptual resources to encompass sufficiently the complex dimensions of such issues.

Inherent in the Committee's approach to research was the assumption that basic information must be assembled on a uniform basis in each component of its work. Prevailing fashions concerning how research information is collected in one field may preclude the possibility of providing answers to questions which are pertinent to other disciplines. On the matter of the victim's age, for instance, questions having legal significance differ substantially from those having medical relevance and the concerns of social survey researchers often ignore those of both professions.

In the design of its research, the Committee strove to obtain and assemble basic information that would be amenable to address the concerns of different perspectives in relation to common issues. In relation to sexual offences, for instance, the Committee found that none of the existing classification systems used by different public services identified the exact nature of the sexual acts

committed or was comparable. In this regard, in designing its research the Committee adopted a grounded approach based, where feasible, upon a detailed specification of the types of sexual acts committed, the circumstances of the offences, the characteristics of victims and offenders, and the types of services provided by public agencies.

The research approach adopted by the Committee which sought to assemble comprehensive and detailed information stands in sharp contrast with that followed by a number of major proposals for reform of the sexual offences against young persons and adults which have typically proceeded in the face of a conspicuous lack of empirical documentation. In the Committee's judgment, firm empirical documentation is a prerequisite to both the reform of the law and to affording better protection for the victims of crime of all ages.

By describing the wide variety of sexual behaviours which occur, the Committee believes that legislation can be drafted which is more sensitive to the realities of child sexual abuse and to its varying degrees of seriousness for the child and for society. By identifying the practical problems in law enforcement and in the delivery of social and health services, the Committee is convinced that improvements in practice and procedure can be implemented. By determining the nature and extent of child sexual abuse and the effectiveness with which our legal and social institutions react to it, the Committee believes that there is reasonable justification to hope that Canadian children can be better protected.

Research Undertaken

The research undertaken by the Committee is listed in the accompanying table; a description of each study is given in the Committee's full Report.

Research Conducted by the Committee

Research Studies	Information Reviewed/Collected
1. Legislative Reports/Previous Research	Previous legislative/advisory reports; main Canadian research studies.
2. Legal Review	Legislative origins and subsequent amendments to major sexual offences; major legal decisions; legal status of the child; principles of evidence (evidence of children, corroboration, complaints by victims, hearsay, previous sexual conduct, evidence of accused's spouse, similar acts); public access to hearings; publication of victims' names; proposed federal legislation; provincial child welfare statutes; legislation relating to prostitution and obscene materials.

Research Conducted by the Committee (continued)

Research Studies	Information Reviewed/Collected
3. National Population Survey	2008 Canadians in 210 communities, focussing on experience with having been sexually abused as children and youths, making of child pornography and assaults associated with exposure to pornography.
4. National Police Force Survey	6203 cases of sexually abused children; 28 police forces in 10 provinces and the Yukon.
5. Child Protection Services	1. Provincial child welfare statutes, including: child in need of protection; duty to report; and child abuse registers. 2. Special community services 3. 1438 cases of sexually abused children: National Child Protection Survey, 10 provinces and the Yukon.
6. Health Services	1. 623 sexually abused children: National Hospital Survey, 11 hospitals in 8 provinces. 2. Genetic risks of incest: major research studies reviewed. 3. Sexually Transmitted Diseases: treatment and risks relative to 452 children having these conditions. 4. Criminal Injuries Compensation Boards — review of cases given compensation.
7. Publicity	1. 2806 stories concerning sexual offence cases in 34 Canadian newspapers. 2. Legal reporting services listing court decisions and reported judicial decisions, between 1970- 82.
8. Historical Crime Statistics	From 1876-1973, rates of charges laid; types and lengths of sentences; conviction rates.
9. Convicted Child Sexual Offenders	703 convicted child sexual offenders: National Corrections Survey — 10 correctional services (federal and provincial).
10. Child Sexual Assault Homicides	156 child sexual assault homicides, 1961-80.
11. Dangerous Child Sexual Offenders	62 offenders found by courts to be dangerous in relation to sexual offences against children; full listing of all such offenders.

Research Conducted by the Committee (continued)

Research Studies	Information Reviewed/Collected
12. Juvenile Prostitution	1. Review of Criminal Code provisions and municipal statutes. 2. 229 juvenile prostitutes: National Juvenile Prostitution Survey — 8 cities.
13. Production of Child Pornography	Findings from Committee's major national surveys.
14. Access by Children to Pornography	1. Provisions of: Criminal Code; Customs Act; Customs Tariff; Canada Post Corporation Act; Broadcasting Act. 2. Provincial and municipal enforcement practices and guidelines: Provincial Departments of Attorneys General, major municipal police forces. 3. Provincial regulations/ classification of films: operation and classification practices of 8 provincial boards. 4. Importation — operation and enforcement practices of Canada Customs, R.C.M.P. and provincial/ municipal police forces. 5. National Survey of Seizures of obscene/pornographic materials: 26,357 seizures between 1979-81. 6. Contents of Pornography: Content analysis of June 1983, issues of 11 magazines having an annual Canadian circulation of over 14 million copies. 7. Circulation Statistics: Audit Bureau of Circulation Statistics, 1965-81. 8. National Accessibility Survey of Retail Outlets: display of pornographic materials in 1091 retail outlets across Canada. 9. Purchasing of Pornography: findings from National Population Survey. 10. Associated Harms: findings from Committee's major national surveys.

Need for Reform

Presented under nine categories, our recommendations specify the reforms we believe are required in order to provide better assistance for sexually abused children and to afford young persons better protection from becoming victims of sexual offences and exploitation.

1. **Office of the Commissioner** (Recommendation 1);
2. **Education for Protection** (Recommendation 2);
3. **Reform of the Sexual Offences** (Recommendations 3-17);
4. **Principles of Evidence** (Recommendations 18-27);
5. **Strengthening the Provision of Services** (Recommendations 28-34);
6. **Information Systems** (Recommendations 35-38);
7. **Research** (Recommendations 39-40);
8. **Juvenile Prostitution** (Recommendations 41-48);
9. **Pornography** (Recommendations 49-52).

We believe that the actions we propose are essential and that they are feasible to implement. Several of the changes we call for require the reform of the law and a restructuring of services. By themselves, such changes, if acted upon, will not assure complete protection for all sexually abused children. Their implementation, however, will serve to lessen or remove many of the serious deficiencies that now exist.

1. Office of the Commissioner

The problem of child sexual abuse in Canada is so pervasive and deep-rooted that in its response to our recommendations, we believe that the Government of Canada must establish a means to deal adequately and on a co-ordinated basis with these issues. The problems identified and documented in the Report are so far-reaching and complex that they extend well beyond the jurisdictional authority of one or two federal departments or of one level of government alone. In relation to several significant issues pertaining to sexual offences, the Committee found that many of the well founded recommendations of earlier distinguished advisory commissions had never been implemented (1938 Archambault Report; 1956 Fauteux Report; 1958 McRuer Report; and 1969 Ouimet Report).

What is required to bring about the reforms that are needed is an administrative mechanism which co-ordinates the efforts of federal, provincial and municipal governments. In our judgment, it is unlikely that this work can be achieved within the existing organization of public services.

For the reasons given, we believe that the Government of Canada should establish an Office of the Commissioner, reporting directly to the Office of the Prime Minister, having the assigned authority to review the recommendations of this Report and serving as the means of initiating and co-ordinating the reforms which are called for. Assigned its own budgetary allocation for these purposes, the Office of the Commissioner would initiate and co-ordinate the work of various federal departments, work in conjunction with related departments at the provincial level and establish the means needed to assure the full participation of non-governmental agencies in these activities.

Where special needs have been recognized in the past (Human Rights, Status of Women), the Government of Canada has established special bodies which are assigned responsibility to respond to these issues. On the basis of our findings, there can be no doubt that the establishment of an Office of the Commissioner is warranted in order to initiate and marshall the efforts of all levels of government and non-governmental agencies, having as their common purpose, the provision of services required to reduce and prevent child sexual abuse.

Recommendation 1

The Committee recommends that, in order to provide an effective network of services for the assistance and protection of sexually abused children and youths, the Government of Canada establish an Office of the Commissioner reporting directly to the Office of the Prime Minister having assigned responsibility:

1. **To implement the Committee's proposals for social and legal reform.**

2. **To establish, in conjunction with non-government agencies and the provinces, the most useful mechanism for co-ordinating and integrating public and private efforts for providing these services.**

2. Education for Protection

The Committee's findings show the compelling nature of the fears and stigma associated with having been a victim of sexual assault. In order for a child to seek help or give evidence, pre-requisites are the recognition that an act was wrong and the strength to overcome the fears and shame involved in telling others about these acts. The Committee believes that a national program of education and health promotion should be undertaken so that children and youths may be better informed about how to protect themselves from the risks of sexual abuse.

Recommendation 2

The Committee recommends that one of the principal responsibilities of the program that is established in conjunction with the Office of the Commissioner co-ordinating federal, provincial and non-governmental agencies' initiatives be concerned with the development and implementation of a continuing national program of public education and health promotion focussing specifically on the needs of young children and youths in relation to the prevention of sexual offences and affording better protection for children, youths and adults who are victims.

The Office of the Commissioner, in conjunction with federal and provincial ministries and non-governmental agencies, should actively seek the co-operation of the media, including the National Film Board of Canada and provincial educational radio and television services. Few such resources are now available that are geared to serve these purposes.

3. Reform of the Sexual Offences

The Canadian legal system has established in the civil and the criminal law two distinct means of responding to harmful actions committed against children and youths. Either or both of these approaches may be followed in incidents involving child sexual abuse. Under the provisions of provincial child welfare legislation, the state has the authority to intervene, or if the need is shown, to remove a child where it is deemed that he or she is being abused or neglected. In contrast, the criminal law provides the basis for the laying of charges against suspected offenders and for their punishment after conviction.

The existing laws, both civil and criminal, lack a central purpose and rationale with respect to affording protection for children against sexual offences. A crucial weakness inherent in the existing legal framework is that, in practice, there are no clearcut procedures establishing when either or both of these two contrasting forms of state intervention should be used. These important decisions, having critical consequences for the well-being of the child, are largely left to the discretion of attending helping and enforcement workers. As a result, instances occur that constitute grave negligence either because there is insufficient assessment of the child's needs or because there is inadequate follow-up to assure that the child is fully protected from the risk of further sexual abuse.

Child sexual abuse differs in several important respects from sexual offences committed against adults. Historically, Canadian criminal law has failed to recognize that child sexual abuse is a complex phenomenon, one that encompasses many different forms of unacceptable sexual behaviours. Many of the terms now used in the law obscure the nature of the conduct being prohibited, making it virtually impossible in some cases to know whether adequate protection is in fact being provided for children.

We believe our proposed reforms would provide better protection for children and youths. These reforms would clearly identify those types of sexual conduct which Canadians regard as unacceptable. These include: sexual intercourse with young girls; incest; buggery; bestiality; genital and anal acts involving children; sexual invitations to children; abuse of positions of trust; and acts of genital exposure. Our proposals are based upon five principles involving the clear specification of: the nature of the sexual acts committed; the age of the child who was the victim of the offence; the child's lack of consent; the type of legal or social relationship between the child and the offender; and the injuries and harms incurred.

Just as the sexual offences in the criminal law fail to recognize the many different types of child sexual abuse, there is likewise no rational sentencing policy in regard to sexual offences committed against young persons. The same behaviour may be charged under several different sections of the *Criminal Code*, each carrying a different maximum penalty and having different evidentiary requirements. Our research documents that this situation has resulted in confusion in the laying of charges and the sentencing of offenders.

- Many of these offences do not take into account that young persons are particularly vulnerable to sexual abuse and exploitation.
- The existing system of penalties is both irrational in its structure and application. In relation to sentences given to convicted child sexual offenders, the Committee found that:

(i) for sexual offences having higher penalties, the sentences imposed were proportionately shorter than those imposed in the case of offences having shorter maximum terms.

(ii) even where similar types of sexual acts had been committed (for example, sexual intercourse), the average lengths of the sentences imposed varied sharply in relation to different sexual offences.

The assumption is made in some quarters that the sentences imposed by courts are logically and directly related to the types of acts proscribed in the offences. Our research indicates that these assumptions are invalid in relation to sexual offences committed against children and youths. For many of the existing offences, there is only a partial congruence between the nature of the sexual acts committed and the charges laid or the sentences imposed. Instead of developing a separate section of the *Code* dealing with sentencing, we recommend that the sexual offences against children and youths should be realigned to accord with the specific sexual acts committed and that the sentences imposed be related rationally to this re-structuring of the criminal law. We believe that our proposed reforms would provide a more realistic and rational basis for penal policy with respect to sexual offences against children and youths. At the present time, no such clearly enunciated policy exists.

Sexual Intercourse: Girls Under 16

In light of the health risks to young girls which are extensively documented in the Report, we believe that special statutory protection is warranted

for them. There will seemingly always be men, young and old, who do not accept that it is wrong to have sexual intercourse with young girls. For these men, detection and prosecution may act as a deterrent.

Under current Canadian law, there is an absolute prohibition against a male person having sexual intercourse with a female person who is not his wife and who is under the age of 14 years. It is no defence that the accused believes that she is 14 or older, and an accused found guilty of this offence is liable to imprisonment for life. Consensual sexual intercourse involving girls 14 or 15 is, however, subject only to a qualified form of prohibition: the prohibition applies only where the female is "of previously chaste character" and the court may find the accused not guilty if the evidence does not show that the accused was more to blame than the female for the sexual behaviour. In the Comittee's judgment, the qualification largely defeats the purpose of this offence.

Recommendation 3

The Committee recommends that:

1. **Section 146(1) of the *Criminal Code* be retained, and that the maximum punishment for this offence be changed to a sentence of less than 14 years' imprisonment.**
2. **Section 146(2) be retained, but that sections 146(2)(b) and 146(3) of the *Criminal Code* be repealed.**
3. **Section 140 of the *Criminal Code* be amended to specify the age of 16 years instead of the present age of 14 years.**
4. **Section 147 of the *Criminal Code*, which states that no male person shall be deemed to commit an offence under section 146 while he is under the age of 14 years, should be repealed. This provision is a legal anachronism and no longer serves any useful purpose. The relevant age should be the general age of criminal responsibility, which is set at 12 in the *Young Offenders Act*.**

Incest

On the basis of its extensive research findings and its study of the genetic risks to the children of incestuous unions, the Committee strongly believes that the offence of incest should be retained and amended. That there are considerable genetic risks to the off-spring of incestuous unions is a contributing, though not the principal, reason for retaining this offence. The Committee found that:

- Blood relatives (prohibited from having sexual intercourse with each other) committed different sexual acts against:

  9.9 per cent of victims — National Population Survey

  9.1 per cent of victims — National Police Force Survey

  23.7 per cent of victims — National Hospital Survey

  45.8 per cent of victims — National Child Protection Survey

- The likelihood that children born from incest will have a genetic disorder is as high as 50 per cent in comparison to between 2-3 per cent for children of unrelated parents.

Criminal prosecutions for incest constitute only a small proportion of all legal proceedings relating to incest, most of which take place in the context of civil, child welfare proceedings. The criminal law typically is used only as a last resort, and as a decisive means of ending the incestuous relationship and of protecting other family members who may be at risk. The incest offence in the *Criminal Code* plays an important part in the efforts by social agencies to secure the safety and well-being of young incest victims; the repeal of this offence would make their work more difficult. Closer co-operation between the police, the Crown and child welfare authorities will help to ensure that prosecuting a father for incest is genuinely in the best interests of the victimized child and her family.

In the Committee's judgment, the question is not whether such an option should be available, but rather, in what circumstances this option should be pursued. This latter question is best left to the informed and collective judgment of child welfare authorities, the police and the Crown, taking into account all the circumstances of the particular case. We believe that the term "incest" should be retained, since by it the nature of the prohibited conduct is generally understood by the community, which is concerned to take effective measures to stop it.

Recommendation 4

The Committee recommends that:

1. **The offence of incest in section 150 of the *Criminal Code* should be retained, with section 150(3) to be amended to provide that section 150 does not apply to any person who has sexual intercourse under restraint, duress or fear of the person with whom he or she has the sexual intercourse.**

2. **Section 147, which states that no male person shall be deemed to commit an offence under section 150 while he is under the age of 14 years, should be repealed. The relevant age should be the general age of criminal responsibility.** (10 yr. 12, Recommendation)

Age of Sexual Autonomy

Under current Canadian law, two persons must be 21 or older to be assured that, apart from incest, none of their private consensual sexual conduct constitutes a criminal offence. Both buggery (sexual intercourse *per anum* by a male person with a male or a female person) and gross indecency (a wide range of homosexual and heterosexual behaviours) with another person are prohibited. These offences do not apply to any consensual act committed in private between a husband and his wife, or any two persons, each of whom is 21 or older.

In light of developments since 1969 when the exception from criminal liability in section 158 was introduced, the Committee considers that 18 would be a more appropriate age of autonomy for these types of conduct. The Committee's conclusion is supported by two important considerations:

- The age of 18 is the age of legal majority in most Canadian provinces. The Committee considers this an important factor in determining at what age the criminal law should cease to regulate private, consensual sexual acts between persons. In the view of the Committee, a person who is deemed to be an adult for many important social and legal purposes should be able to engage in private consensual sex with another adult, without fear of incurring a criminal sanction.
- The Committee's findings from the *National Police Force Survey* indicate that, if the age of "full consent" to heterosexual or homosexual behaviour were lowered from 21 to 18, this would not affect police-charging practices to any appreciable extent.

There is considerable medical opinion that sexual orientation is settled by age 16. There is also opinion to the contrary. The Committee is concerned that legal protection be retained where it may be useful to young persons. The Committee would therefore not reduce the age of sexual autonomy to 16 in the absence of persuasive evidence that such a reduction would pose no risk to developing sexual behaviour.

Recommendation 5

The Committee recommends that section 155 of the *Criminal Code* be amended to provide that:

1. **Every male person who performs an act of buggery on a female person who is not his wife and who is under the age of 18, or on a male person who is under the age of 18, is guilty of an indictable offence and is liable to:**

   (i) imprisonment for less than 14 years, if the person on whom the act is committed is under the age of 14, or

   (ii) imprisonment for 5 years, if the person on whom the act is committed is 14 years of age or more, and is under the age of 18 years.

2. **It is no defence to a charge under this section that the person on whom the act was committed consented to the act, or that the accused believed such person to be 18 years of age or older.**

Bestiality

The Committee considers that the offence of bestiality (sexual intercourse by a male or female person in any manner with an animal) should be retained in the *Criminal Code*, particularly as such conduct may involve the induced or coerced participation of another person. In the National Corrections Survey, one in 100 convicted child sexual offenders had involved young victims in acts of this kind.

Recommendation 6

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **Every one who commits bestiality is guilty of an offence punishable on summary conviction.**

2. **Notwithstanding section (1) above, every one who**

   (i) incites, counsels, procures, or compels another person to engage in an act of bestiality, or

   (ii) engages in an act of bestiality in the presence of, or with the participation of, another person who is under the age of 18 years, is guilty of an indictable offence and is liable to imprisonment for less than 14 years.

3. **It is no defence to a charge under this section that the accused believed the person to be 18 years of age or older.**

Genital and Anal Acts: Persons Under 16

Under the criminal law reforms recommended by the Committee:

- Children under the age of 14 would receive absolute legal protection against any form of sexual touching by another person.
- Girls under the age of 16 would receive absolute legal protection against acts of vaginal sexual intercourse with a male person.
- Young persons of both sexes under the age of 18 would receive absolute legal protection against acts of buggery (anal intercourse) committed on them by a male person.

Accordingly, in the absence of special legal provisions, a young person of 14 years of age or older is capable of giving a valid consent to some forms of sexual conduct with another person. In the the judgment of the Committee, the most serious forms of genital and anal sex involving a person under the age of 16 years warrant special attention, and should be excluded from the class of sexual conduct to which a young person under 16 is capable of giving a valid legal consent. Such an offence would cover such acts as fellatio, cunnilingus, and vaginal or anal penetration with a finger or object where they are committed on a young person under the age of 16, and which go beyond normal adolescent "petting".

Recommendation 7

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **Every one who, for a sexual purpose, touches a young person in the genital or anal region with any part of his or her body or with any object, is guilty of an indictable offence and is liable to:**

   (i) imprisonment for less than 14 years, if the complainant is under the age of 14 years; or

(ii) imprisonment for 10 years, if the complainant is 14 years of age or older, and is less than 16 years of age.

2. **In this section, "young person" means a person who is under the age of 16 years.**

3. **It is no defence to a charge under this section that the young person consented to the activity that forms the subject-matter of the charge, or that the accused believed that the young person to be 16 years of age or older.**

Invitation Cases

The legal concept of an "assault" causes difficulty where an accused, for a sexual purpose, invites a child to touch him or her (for example, to masturbate him or her), but neither touches nor threatens to touch the child in return. In these circumstances, Canadian courts have held that, since there is no assault, the question of indecent or sexual assault does not arise.

In the Committee's judgment, offensive sexual conduct of this kind which involves children under the age of 14 years should be specifically prohibited in the *Criminal Code*.

Recommendation 8

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **Every person who, for a sexual purpose, invites, counsels, incites, or causes a child:**

   (i) to touch any part of such person's body; or

   (ii) to touch any part of another person's body;

   is guilty of an indictable offence and is liable to imprisonment for 5 years.

2. **In this section,**

   (i) "child" means a person under the age of 14 years;

   (ii) "to touch" includes both direct and indirect physical contact.

3. **It is no defence to a charge under this section that the accused believed the child to be 14 years of age or older.**

Abuse of Position of Trust

The Committee's findings indicate that (excluding acts of genital exposure) about one in four of the sexual offences against young persons was committed by persons either prominent in the child's life or by persons to whom the child was particularly vulnerable. The common denominator linking these different classes of offenders was that, by reason of their biological, legal or social relationship to their young victims:

- Their opportunities for sexually abusing the children were greater than ordinary.

- Correspondingly, their young victims were particularly vulnerable to them.
- By so acting, these offenders breached the vital position of trust reposed in them due to their special relationship to their young victims.

The Committee considers that more comprehensive protection must be provided against such abuses of trust, protection more in keeping with the realities of modern social life. We believe that this protection must apply both to a wider range of ascendancy relationships than has traditionally been recognized and to abuses of trust that involve either sexual intercourse or other forms of sexual touching.

Recommendation 9

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **Every one who is in a position of trust towards a young person and who commits a sexual touching with, on, or against such young person is guilty of an indictable offence and is liable to imprisonment for 10 years.**
2. **In this section, "young person" means a person under the age of 18 years.**
3. **In this section, "a sexual touching" includes both direct and indirect physical contact.**
4. **It is no defence to a charge under this section that the young person consented to the activity that forms the subject-matter of the charge, or that the accused believed the young person to be 18 years of age or older.**
5. **Without restricting the generality of the phrase "position of trust", where the accused, at the time of the offence, stood in any of the following relationships to the young person, he or she shall be conclusively deemed to have been in a position of trust towards such young person:**

- **parent**
- **step-parent**
- **adoptive-parent**
- **foster parent**
- **legal guardian**
- **common-law partner of child's parent, step-parent, adoptive parent, foster parent, or legal guardian**
- **grandparent**
- **uncle, aunt**
- **boarder in young person's home**
- **teacher**
- **baby-sitter**
- **group home worker**
- **youth group worker**
- **employer**

Acts of Genital Exposure

Given the sheer prevalence of acts of genital exposure against children documented in the national surveys, the Committee considers that this form of offensive behaviour should be classified separately and distinctly in the *Crimi-*

nal Code. Acts of exposure constitute the largest single category of all types of sexual offences committed against children and youths.

Recommendation 10

The Committee recommends that section 169 of the *Criminal Code* be retained and that the *Criminal Code* be amended to provide that:

1. **Everyone who, for a sexual purpose, exposes his or her genitals to a young person is guilty of an offence punishable on summary conviction.**

2. **In this section, "young person" means a person who is or, in the absence of evidence to the contrary, appears to be under the age of 16 years.**

Loitering by Convicted Sexual Offenders

The current vagrancy offence in the *Criminal Code* was intended to provide a sanction against convicted sexual offenders who were found to be loitering or wandering in or near places frequented by children. Due to a drafting error in the most recent re-enactment of this section, the wording in the section does not refer to any sexual offence, and hence this offence cannot be charged. The Committee believes that the prohibition should constitute an offence quite separate from any vagrancy offence.

Recommendation 11

The Committee recommends that the *Criminal Code* be amended to provide that:

> **Everyone who having at any time been convicted of any sexual offence under the *Criminal Code* is found loitering or wandering in or near a school ground, playground, public park, or bathing area is guilty of an offence punishable on summary conviction.**

Consent by Children

The Committee's review of consent identified the need to amend the *Criminal Code* to include certain general principles relating to consent by children to sexual offences. One is that conduct not involving force, threats or fear of the application of force, fraud or the exercise of authority may nevertheless vitiate the consent of a child under the age of 14 to the commission of any sexual offence. Another is that while provision may be made for a higher age, consent by a child under 14 to the commission of any sexual offence is never a defence to a charge.

Recommendation 12

The Committee recommends that in order to provide additional protection for children, the General Part of the *Criminal Code* be amended to provide that:

1. **Conduct not involving force, threats or fear of the application of force, fraud, or the exercise of authority may nevertheless vitiate the consent of a person under the age of 14 years to the commission of any sexual offence.**

2. **While provision may be made for a higher age, consent by a person under 14 to the commission of any sexual offence is never a defence to a charge.**

Amendments Introduced in January, 1983

For the reasons extensively documented in the Report, the Committee considers that a legal defence based on the closeness in age of the accused to the complainant, whether in relation to acts of sexual intercourse or in relation to other sexual behaviours, would remove protection from young persons and may even have the unintended result of encouraging their exploitation. The research findings show that young victims are as likely to be threatened or forced to engage in sexual acts by persons relatively close in age as by older persons.

Recommendation 13

The Committee recommends that section 246.1(2) of the *Criminal Code* be repealed, and that the following provision be substituted in its place:

> **Where an accused is charged with an offence under subsection(1) or section 246.2 or 246.3 in respect of a person under the age of 14 years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge.**

Repeal of Out-dated Provisions

The Committee recommends the repeal of several existing sexual offences in the *Criminal Code*. Some of these have become outmoded; others have been extensively reformulated by the Committee in order to provide greater protection for young persons.

Recommendation 14

The Committee recommends that the following sections of the *Criminal Code* be repealed:

Sections 141 and 168(2)
One year limitation period in which to prosecute certain sexual offences. These sections are no longer applicable in light of the Committee's recommendations, and the Committee is opposed to any limitation period on prosecution for sexual offences against children.

Section 147
Provision that no male person under 14 shall be deemed to commit an offence under section 146 or section 150.

Section 151
Seduction of female between 16 and 18 years of age.

Section 152
Seduction under promise of marriage.

Section 153
Illicit sexual intercourse with step-daughter, foster daughter or female ward, or with female employee. These behaviours would be prohibited by the Committee's "abuse of position of trust" offence.

Section 154
Seduction of female passenger on board a vessel.

Section 155
Buggery or bestiality. This section has been reformulated by the Committee.

Section 157
Gross indecency.

Section 158
Exception concerning private consensual sexual conduct. This section is no longer necessary in light of the Committee's reformulation of section 155 and recommendation for repeal of section 157.

Sexually Transmitted Diseases

The Committee's research concerning sexually transmitted diseases contracted by children and youths indicates the serious nature of the health risks associated with these conditions.

- Of girls having sexually transmitted diseases, one in four had a pelvic inflammatory disease, a condition which can result in serious long-term complications.
- Most of the young patients' sexual partners were older persons, with one in four being an adult.

Despite these and other findings, however, in light of the entrenched and pervasive social and professional forces which militate against the effective application of this law, the Committee recommends that the pertinent section in the *Criminal Code* be repealed. In its place, we recommend that: provincial health regulations and statutes be sharply strengthened; more effective surveillance and diagnostic criteria be developed; extensive research be undertaken to obtain necessary information; and information about the health risks of these diseases be incorporated in the recommended national programs of public education and health promotion.

Recommendation 15

The Committee recommends that section 253 of the *Criminal Code* be repealed.

Recommendation 16

The Committee recommends in connection with the repeal of sections 253 of the *Criminal Code* that the Office of the Commissioner, in conjunction with the Department of Justice and the Department of National Health and Welfare in consultation with the provinces and non-governmental agencies appoint an expert interdisciplinary advisory committee having assigned responsibilities:

1. **To conduct comprehensive research at a national level to document the known prevalence of sexually transmitted diseases contracted by children and youths and to assess the health risks involved.**

2. **To develop ways of collecting information in a standard fashion across jurisdictions with regard to the occurrence of sexually transmitted disease, for children and youths under the age of 16 years.**

3. **To advise on the updating of the group of sexually transmitted disease protocols of standard and expected treatment practice, and separately advise on which of these diseases should be made reportable in relation to cases involving children and youths under the relevant provincial statutes and regulations, and in this regard, the full participation and co-operation of the Provincial Colleges of Physicians and Surgeons, and their equivalents, be sought to take an active role to encourage compliance in reporting.**

4. **To review the classification of sexually transmitted diseases and to make recommendations in relation to the modernization of the existing categories used in medical and hospital information systems across Canada.**

5. **To undertake a national survey of the experience and knowledge of children, youths and adults about sexually transmitted diseases and pregnancy, and to make recommendations with respect to the development of programs of public education and health promotion focussing upon the more effective provision of preventive and treatment services.**

Dangerous Offenders

In the National Corrections Survey, information was obtained about 703 *convicted child sexual offenders.*

- One in three offenders had no prior criminal record, one in four was a sexual recidivist (previous sexual offence conviction) and the remainder had previous convictions for other criminal offences.
- One in five offenders was the young victim's father (natural, step, foster, adoptive, common-law); one in four was a stranger.
- One in six offenders had been hospitalized for mental illness at least once prior to his current conviction.

  In comparison to sexual recidivists, those who had previously committed non-sexual offences had more often injured victims and had committed more serious sexual offences in relation to current convictions.
- The findings suggest there is a progression from minor to more serious sexual acts having been committed by sexual recidivists.

The Committee obtained documentation about all *dangerous child sex offenders*. These dangerous child sexual offenders constituted over half of offenders for Canada designated as being dangerous and three in four of all dangerous sexual offenders. When the circumstances of the sexual offences committed by dangerous child sexual offenders are compared to those committed by most of the other convicted child sexual offenders, it was found that the conduct involved in the offences committed by both groups was remarkably similar.

There can be no doubt in instances where sexual offences against young persons have been committed that the application of the legal provisions pertaining to dangerous offenders is not made on a consistent and uniform basis. Despite amendments made to this legislation in recent years, sharp regional disparities still persist in this regard.

In the Committee's judgment, the options with respect to dangerous offender provisions, now inequitably applied, are clear in relation to persons convicted of sexual offences against children and youths. The provisions relating to dangerous sexual offenders should be amended to provide added protection for children against sexual offences, or new separate legislation should be introduced for this purpose.

Recommendation 17

The Committee recommends that:

1. **The provisions in Part XXI of the *Criminal Code* relating to dangerous offenders convicted of sexual offences against children and youths be amended to:**

   (i) specify the major sexual offences in the definition of "serious personal injury offence";

   (ii) specify the conduct by which a sexual offender shows his disregard for others, and in particular, for children; and

   (iii) indicate clearly that physical or mental harm is not a requirement in the case of child victims of sexual offences.

2. **In keeping with the above amendments, which focus on specific conduct and offences, any mention of the prediction of future behaviour be deleted from dangerous offender legislation.**

3. **If the above amendments are not enacted, new legislation, separate from the dangerous offender provisions and meeting the proposed requirements, should be enacted to provide added protection for children against sexual offences.**

4. Principles of Evidence

In relation to principles of evidence, the Committee's law reform proposals relate to: the evidence of children; corroboration; complaints by victims; hearsay; previous sexual conduct; evidence of an accused's spouse; similar acts; public access to hearings; and publication of victims' names.

Evidence of Children

A fundamental change is needed in the law to permit children to speak directly for themselves at legal proceedings. While recently the truthfulness of victims of sexual offences has been regarded with less scepticism than in the past, the law still regards children's evidence with suspicion.

We believe that there should be no special rules with respect to the child's legal competence to give evidence in court. A child's evidence should be received and considered in the same light as that of adults. Our research indicates that the assumptions about the untrustworthiness of young children and their inability to recall events with respect to sexual offences are largely unfounded.

- Young children are no more prone to giving vague accounts to the police than older children.
- Young children are capable of speaking effectively on their own behalf. In the vast majority of cases reported to the police and doctors, their accounts were believed.
- In assessments made by child protection workers involving cases in which children had been involved in legal proceedings, the majority of these children were not believed to have experienced any serious or lasting harms.

To make a child's testimonial competency contingent upon or influenced by the child's age fails to take into account the cognitive and developmental differences among children of the same age and, in the Committee's view, is wrong in principle.

Recommendation 18

The Committee recommends that the *Canada Evidence Act*, the *Young Offenders Act* and each provincial and territorial evidence act be amended to provide that:

1. **Every child is competent to testify in court and the child's evidence is admissible. The cogency of the child's testimony would be a matter of weight to be determined by the trier of fact, not a matter of admissibility.**
2. **A child who does not have the verbal capacity to reply to simply framed questions could be precluded from testifying.**
3. **The court shall instruct the trier of fact on the need for caution in any case in which it considers that an instruction is necessary.**

In the Committee's view, these reforms would help to ensure that Canadian children receive the full benefit of the protection the law seeks to afford them.

Corroboration

The Committee considers that the current state of the law with respect to the corroboration of an "unsworn" child witness's testimony is unacceptable. This conclusion is based on the following reasons.

The legal tests for the reception of children's evidence either upon oath (sworn) or not upon oath (unsworn) have become very close together in practice, notwithstanding that the corroboration requirements are completely different depending on whether the child gives sworn or unsworn evidence. The Committee considers that the subtle practical distinction between these two tests is too tenuous a basis upon which to attach a legal distinction.

With respect to the unsworn evidence of a child, the wording of section 586 of the *Criminal Code* is different from the wording of section 16(2) of the *Canada Evidence Act* and section 61(2) of the *Young Offenders Act*, in the absence of any indication whether the corroboration required by these provisions differs depending on the legal context in which the issue of corroboration arises. Section 61(2) of the *Young Offenders Act* is similar to section 16(2) of the *Canada Evidence Act*.

The Committee's research refutes the assumption that the allegations of young sexual victims are intrinsically less trustworthy than those of older victims and argues against the need for special corroboration requirements where young children are concerned.

Recommendation 19

The Committee recommends:

1. **That there be no statutory requirement for the corroboration of an "unsworn" child's evidence. The implementation of this recommendation would involve the repeal of section 586 of the *Criminal Code*, section 16(2) of the *Canada Evidence Act*, and section 61(2) of the *Young Offenders Act*, and corresponding sections of provincial evidence acts.**

2. **That the statutory corroboration requirements in sections 195(3) [procuring] and 253(3) [communicating a venereal disease] of the *Criminal Code* be repealed.**

3. **For greater certainty, that the *Criminal Code* be amended to provide that the "corroboration not required" provision in section 246.4 of the *Criminal Code* applies to *all* sexual offences, and not only to those offences currently listed in section 246.4.**

Complaints by Victims

Although the Committee agrees with the abrogation of the "recent complaint" doctrine in 1983, the pertinent section of the *Criminal Code* states only that the "rules relating to evidence of recent complaint in sexual assault cases are hereby abrogated". On its face, the section would appear to abrogate the recent complaint doctrine only with respect to the "sexual assault" offences in the *Criminal Code*. At common law, however, the doctrine of recent complaint applied to all sexual offences, whether or not the complainant's consent was in issue. Further, a number of sexual offences against young persons do not require that the child be "assaulted" in the legal sense, for example, incest, gross indecency and the unlawful sexual intercourse offences. The credibility of

a child victim of one of these offences may, accordingly, still be impugned under the recent complaint doctrine if the child does not complain of the incident at what the court considers to be the first reasonable opportunity. The Committee considers this to be wholly unsatisfactory.

- The Committee's research indicates that the length of time taken to report an alleged sexual abuse was not a critical factor in the police decision to lay a criminal charge.

The remarks the child or young person makes on reporting the incident often constitute the most cogent possible evidence and should not be excluded from the court's consideration. In the Committee's judgment, this form of evidence should be admissible on the basis of a statutory exception to the hearsay rule.

Recommendation 20

The Committee recommends that section 246.5 of the *Criminal Code* be amended to provide that:

> **The rules relating to evidence of recent complaint are abrogated with respect to *all* sexual offences.**

Hearsay

An out-of-court statement made by a young child which indicates that the child may have been sexually abused is inadmissible hearsay unless the circumstances of the statement fall within one of the established exceptions to the hearsay rule. Given the nature of sexual abuse of young children, however, such statements typically will not fall within any of the established or proposed hearsay exceptions. In the Committee's view, neither the exceptions to the hearsay rule at common law, nor the statutory proposals (Bill S-33), offer sufficient opportunities for the out-of-court statements of young children to be admitted in evidence for the purpose of proving that the matters asserted in those statements are true.

- In its research, the Committee found that sexual offences against young children were brought to police attention predominantly by persons other than the victims themselves. Under current rules of evidence, many of these statements made by child sexual victims would constitute hearsay and would be inadmissible in court.

In the Committee's view, whether a child's previous statements relating to his or her sexual abuse should be admitted in evidence as an exception to the hearsay rule is best approached on a case-by-case basis. An inflexible rule, whether inclusionary or exclusionary, would fail to take into account the wide variability of circumstances from one case to the next and would be wrong in principle.

Recommendation 21

The Committee recommends that the *Canada Evidence Act*, each provincial and territorial evidence act, and the Quebec *Code of Civil Procedure* be amended in order to provide that:

1. **A previous statement made by a child when under the age of 14 which describes or refers to any sexual act performed with, on, or in the presence of the child by another person.**
2. **Is admissible to prove the truth of the matters asserted in the statement.**
3. **Whether or not the child testifies at the proceedings.**
4. **Provided that the court considers, after a hearing conducted in the absence of the jury, that the time, content and circumstances of the statement afford sufficient indicia of reliability.**
5. **"Statement" means an oral or a recorded assertion and includes conduct that could reasonably be taken to be intended as an assertion.**

Previous Sexual Conduct

The Committee considers that the amendments introduced in 1983 provide sufficient safeguards against unjustified inquiries into the complainant's past sexual conduct or sexual reputation, where the accused is charged with a form of "sexual assault".

These reforms, however, fail to provide any additional protection at all to young persons who are victims of a sexual offence other than a form of sexual assault, for example, incest, gross indecency and sexual intercourse with a female under age 14. In trials concerning the latter offences, the common law assumption that an unchaste young person is more likely to be untruthful will continue to operate. Consequently, insinuations concerning a young complainant's sexual history may still be admissible simply to impeach his or her credibility as a witness. In the Committee's view, this state of affairs is unacceptable.

Recommendation 22

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **Sections 246.6(1)(a) and 246.6(1)(b), and the corollary provisions in sections 246.6(3) through 246.6(6), apply to *all* sexual offences.**
2. **Section 246.7 applies to *all* sexual offences.**

Evidence of an Accused's Spouse

Recent years have witnessed an expansion of the kinds of offences for which the victim spouse will be considered competent to testify against the

offending spouse. This development has been broadened to include offences directed not only against the spouse of the offender, but also against a child of the family. As a consequence of the amendments to the *Canada Evidence Act* introduced in 1983, the wife or husband of a person charged with virtually any sexual offence against a young person is a competent and compellable witness for the Crown, and this applies also to other assaultive offences where the offending spouse's victim is under the age of 14.

The rules of evidence relating to spouses in child welfare proceedings are governed by provisions of the various provincial child welfare laws, or by provincial evidence acts, or by both. There is uncertainty in a number of jurisdictions about whether a spouse who is compellable at a child welfare proceeding may also be compelled to disclose relevant communications made to him or her by the other spouse during their marriage.

The Committee considers that, in cases of alleged sexual or physical abuse of a young person, the social importance of making available to the court all probative evidence far exceeds that of ostensibly protecting a marital relationship. That the sexual abuse of young persons, by its very nature, is difficult to prove makes it even more crucial that all potentially relevant testimony, whether elicited from the offender's spouse or from an other party, should be accessible to the judicial process. Public policy and children's safety alike require that probative evidence should not be withheld.

Recommendation 23

The Committee recommends that:

1. **The *Canada Evidence Act* be amended to provide explicitly that, where a spouse is competent and compellable pursuant either to section 4(2) or 4(3.1) of that Act, the privilege of non-disclosure contained in section 4(3) may *not* be claimed by that spouse.**

2. **Each provincial and territorial evidence act, and the *Quebec Code of Civil Procedure*, be amended to provide explicitly that, where a spouse is otherwise competent and compellable at a child welfare proceeding, such spouse may *not* claim any privilege of non-disclosure relating to interspousal communications.**

Similar Acts

The doctrine of similar act evidence tends to afford protection for sexually abused young persons. It allows the previous sexual behaviour of the accused with the same child or with others to be used to show that the accused may be guilty of the sexual offence charged, while safeguarding the accused against far-fetched inculpatory inferences based on his or her prior behaviour.

In light of the these considerations, the Committee recommends that this evidentiary doctrine be retained. Further, the Committee considers that the "similar acts" exception to the character evidence rule should not be codified.

Evidence of past incidents of child abuse by parents (evidence of "past parenting") has an important role to play in child welfare proceedings, in determining whether a child is in need of protection from a particular person or persons and, if so, the most appropriate legal disposition vis-a-vis the child. The Committee considers that the court should have before it all relevant evidence in making these determinations.

Recommendation 24

With respect to provincial child welfare legislation, the Committee recommends that a provision similar to section 28(4) of the Ontario *Child Welfare Act* be enacted in each province and territory. Section 28(4) of that Act provides:

> **Notwithstanding any privilege or protection afforded under the *Evidence Act*, before making a decision that has the effect of placing a child in or returning a child to the care or custody of any person other than a society, the court may consider the past conduct of that person towards any child who is or has at any time been in the person's care, and any statement or report whether oral or written, including any transcript, exhibit or finding in a prior proceeding whether civil or criminal that the court considers relevant to such consideration and upon such proof as the court may require, is admissible in evidence.**

Public Access to Hearings

The Committee acknowledges the vital importance of keeping criminal trials open to public scrutiny. In the Committee's view, the limited exceptions to this principle sanctioned in the *Criminal Code* and the *Young Offenders Act* are both appropriate on policy grounds and sufficiently narrow to be defensible on constitutional grounds. However, the Committee concludes that, for sake of greater clarity, these provisions should be amended in order to facilitate obtaining the full and spontaneous account of the child's evidence.

Where, for example, the presence of a public "gallery" in the courtroom would prevent a child or other young witness from giving as clear, full and spontaneous an account of his or her evidence as would be possible if his or her evidence was heard at a closed hearing, there should be express statutory authority for excluding the public.

The question of public access to child welfare proceedings is grounded in somewhat different considerations. Canadian provinces and territories have taken widely varying positions on this question, in accordance with their differing views about the most workable model for resolving child welfare controversies and the most appropriate set-off between public scrutiny and institutional effectiveness. In light of the Committee's research findings that most children are not considered to be harmed by participating in criminal or child welfare proceedings, whether open or closed, the Committee considers it inadvisable to recommend a single, uniform approach to this issue in the context of child welfare proceedings.

Recommendation 25

The Committee recommends that the *Criminal Code*, the *Young Offenders Act* and each child welfare act or equivalent contain a provision authorizing a judge to proceed *in camera* where such a course is required in order to obtain a full and candid presentation of a child's testimony. The proper administration of justice requires that the "best evidence" of all parties be accessible to the judicial process.

Publication of Victims' Names

In its review of the policies and practices concerning the publication of the names of children and youths who were victims of sexual offences, the Committee: monitored news articles concerning sexual offences published for a year in 34 newspapers across Canada; undertook a review of legal judgments reported by major legal reporting services; and requested the editor of each of these reporting services and the Chief Justice or Chief Judge of every Canadian court having criminal jurisdiction to provide information concerning its policy in this regard.

Of the 2806 news articles reviewed in 34 newspapers, across Canada, information was given in 11 reports that tended to identify complainants who were children or youths. The Committee found that the practice of Canadian newspapers with respect to restricting the publication of information which might serve to identify young victims of sexual offences was one of commendable restraint. With few exceptions, the identities of young victims were not reported.

In its review of cases published by legal reporting services and the transcripts of court decisions, the Committee found 189 instances in which the identities of children and youths who had been victims of sexual offences had been disclosed. This number is a conservative estimate. Between 1970 and 1982, there were 111 cases in which young complainants were named, over two-thirds of which involved decisions by provincial Courts of Appeal. With respect to the likelihood of being named, the young complainants of sexual offences are at greater risk of being identified in published accounts of legal reporting services and the transcripts of court decisions than they are of such disclosures being made in the nation's newspapers.

In the Committee's judgment, this practice which may be harmful to children is an unacceptable invasion of their privacy. It should cease.

Recommendation 26

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **In relation to any sexual offence contained in Part IV, Part V, or Part VI of the *Criminal Code*, no one shall publish any report in which the Christian name or surname of the child, or in which any information serving to identify the child, is disclosed.**

2. **"Information serving to identify the child" includes, but is not restricted to:**

   (i) the name of the offender, where the offender is biologically or legally related to the child, or has the same name as the child;

   (ii) the address of the accused or the child;

   (iii) the school that the child attends, or the child's place of employment;

   (iv) the address or location where the offence is alleged to have been committed; and

   (v) the names of any witnesses whose relationship to the child or to the accused might give an indication of the child's identity.

3. **The prohibition referred to in point (1) above is automatic, and does *not* require an application by the complainant, the Crown or the accused.**

4. **The prohibition attaches immediately upon either the laying of an information against the accused, the preferring of an indictment against the accused, or the arrest of the accused, whichever occurs first.**

5. **The prohibition is of indefinite duration, and attaches to all stages of the proceedings.**

6. **The prohibition extends to the print media, the electronic media, published court transcripts and the legal reporting services.**

7. **Any one who fails to comply with this provision is guilty of an offence punishable on summary conviction.**

   (Implementation of these recommendations will require consequential amendments to sections 246.6, 261, 442, 457.2, and 467 of the *Criminal Code*, and to sections 38 and 16 of the *Young Offenders Act*).

Recommendation 27

The Committee further recommends that each court having criminal jurisdiction in Canada designate an officer whose responsibility it is to ensure that these provisions are complied with, and that each legal reporting service in Canada do likewise.

5. Strengthening the Provision of Services

While all nations seek to prevent lawless behaviour, it is apparent that any legal system is insufficient by itself to realize these purposes. Other conditions have to be present if a society's children are to be safe. These necessary conditions include an ingrained respect for the dignity of the person, a system of education that informs children and parents about risks and the means of protection which may be sought, and the provision of services of high quality to meet the needs of victims.

There are many public and private programs across Canada that provide assistance and protection for sexually abused children. These functions are

divided between federal, provincial and local levels of government and include a broad assortment of national, community and voluntary associations.

Each of the main helping services has developed somewhat different concepts of child protection, different means for assessing and investigating the needs of young victims, different standards in determining how assistance can best be provided and different ways of providing such help. Our research indicates that, as a result of these different perspectives, many sexually abused children either received no assessment or their needs were only partially and inadequately considered. Because of insufficient follow-up, many were left in situations of continuing risk.

To redress these deficiencies, the Committee believes that a combination of measures is required, including: publicizing widely the work of special programs; the adoption of common minimum standards between services for the assessment, investigation and treatment of sexually abused children; introducing significant changes in provincial child welfare legislation and the current operation of the child abuse registers; and the development of medical examination protocols.

Special Programs

What stands out sharply in the work of the different programs assisting sexually abused children is the immense unevenness of the services provided. Too often, decisions to assist the sexually abused child are made in relative isolation; the policies affecting the care of these children are frequently established by professional workers without a full and open consideration of their propriety or for the short and long-term consequences for the children being served.

With respect to the need for an effective and integrated co-ordination of the several helping services, we reject the notion that adequate protection for the child can only be provided by means of a single approach. There are many different means whereby these purposes may be realized; it is apparent in some parts of Canada that programs are evolving which recognize the need to bring helping services having common objectives more closely together.

The experiences of these special programs — still few in number — should become better known. It is an anomaly that the existing programs in Canada have been largely ignored or remain unknown, while the experience of foreign programs which cannot be readily replicated in this country have been widely acclaimed. We believe that the special programs that have been established in Canada should be fully documented and that their efforts to provide comprehensive assessment, care and protection for young victims of sexual abuse should be considerably strengthened. These programs are providing a leadership which could serve to foster a broader network of services providing a high quality of assistance for sexually abused children across Canada.

As a means of better informing the public and other professional workers about these special programs, national conferences should be held at which the experience of the major services would be presented with the reports being published and widely disseminated.

Recommendation 28

The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice, the Department of National Health and Welfare, the provinces and non-governmental agencies convene national conferences pertaining to child sexual abuse with the reports being published and widely disseminated, including:

1. **Special Youth Programs of Police Forces.**
2. **Special Medical and Hospital Programs.**
3. **Special Child Protection Programs.**
4. **Special Community and Voluntary Association Programs.**

Uniform Minimum Procedures for Services Provided

The formulation and application of standards to ensure that the needs of sexually abused children are being adequately met must be firmly established in practice and in legislation. Not only do our findings show that there is an unequal provision of needed services for these children, but that we are also making poor use of available resources with the result that the adequacy of the services rendered fluctuates widely. In the absence of standards, or of sufficient steps taken to ensure that existing standards are being applied, our findings indicate that there have been regrettable errors of judgment resulting in children being insufficiently assessed concerning the harms that they may have sustained and inadequate investigations concerning their continuing risk of further abuse.

Our research shows, for example, that of sexually abused children served by child protection workers:

- Half of the initial assessments were undertaken within 48 hours of notification; two-thirds were completed within a week.
- Half of these children were reported to have been medically examined.
- Beyond contacts with the police and doctors, other helping services were contacted in only a small proportion of cases.
- Interviews by workers were held, on average, with: three in four victims; seven in 10 mothers; less than half of the fathers; less than half of the suspected offenders; about two in five of the child's brothers or sisters.
- Children who had been victims of serious sexual acts were as likely to be left in their homes as to have been removed. There was no relationship between the removal of offenders and the various types of sexual acts committed.

There is no agreement and few statements concerning what constitutes the minimum necessary level of assessment and care of sexually abused children. With the exception of certain programs, we found little evidence that standards existed which were being consistently or rigorously followed, and where they have been established, of their being reviewed to ensure that they were being observed.

The setting of standards, which are widely recognized and applied, performs an essential, if not always a welcome job. Such standards should be grounded in the judgment of experienced persons having different perspectives of these problems. Their application should be independently reviewed and documented, and they should be periodically revised and strengthened. In light of our findings, there can be no doubt about the need to improve the quality of the assessment and care that are being afforded these children.

At a time when resources for all types of public services are limited and becoming scarcer in relation to meeting potentially infinite service needs, no single group can reasonably expect that it will be assigned its full requested quota of funding and personnel. There is a more important issue, namely, that involving the need for more effective co-ordination of efforts between public agencies providing complementary services to sexually abused children. There can be no doubt in relation to these issues — more complete assessments, more complete investigations and more effective continuing follow-up of cases — that the protection afforded these children must be strengthened.

Recommendation 29

The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice, the Department of National Health and Welfare, Provincial Attorneys-General, Departments of Health and Child Protection Services and non-governmental agencies:

1. Develop minimum standards of services to be provided by each of the main public services (police, medical and child protection services) in relation to the investigation, assessment and care of sexually abused children. These standards, pertaining to each service, should specify, among other considerations, that:

(i) every one must report cases of child sexual abuse to the police and/or to child protection services;

(ii) it be mandatory that all cases of child sexual abuse that constitute sexual offences under the *Criminal Code* be reported to the police;

(iii) an initial assessment is to be made promptly and no later than 24 hours following notification;

(iv) a medical assessment be made of the physical and mental state of all cases of child sexual abuse;

(v) there be clear documentation of services provided and that long-term monitoring be undertaken to assure that the child is at no further risk of being harmed; and

(vi) a procedure be established to review reports of child sexual abuse and ensure that the needs of the children are being adequately met.

2. That legislation be enacted to specify these standards and to assure that they are being met in the assessment and care of these children.

Medical and Hospital Services

A national initiative is required in order to develop procedures and guidelines for the clinical assessment and treatment of sexually abused children. Such an initiative would be one means to strengthen the care and protection of sexually abused children by serving: to alert health professionals to the signs of these problems; to indicate the types of examinations and procedures it may be appropriate to consider and undertake for these children; to provide a basis for the clear specification of how these children may have been harmed and the follow-up required for their assessment and care; and to develop criteria that are medically and legally specific in the collection and documentation of evidence.

Recommendation 30

The Committee recommends that:

1. The Office of the Commissioner, in conjunction with the Department of Justice, the Department of National Health and Welfare, and Provincial Departments of Health and Provincial Departments of the Attorneys-General, establish on a short term basis an interdisciplinary expert advisory committee to develop a standard protocol for the collection of information, examinations to be conducted, findings to be recorded and other necessary procedures.

2. This protocol be made widely available, particularly to those likely to have the first contacts (such as pediatricians, family practitioners and the staff of emergency departments), that regular in-service instruction be provided in its appropriate use, and that a reimbursement item be developed to compensate for the time required for the completion of the protocol.

Provincial Child Welfare Statutes

The Committee obtained extensive findings from its several national surveys in relation to referrals involving child sexual abuse to child protection services. On the basis of these findings, it is evident that child protection services are neither extensively turned to directly by sexually assaulted victims nor do they receive referrals on a sizeable proportion of cases known to the police, hospitals or voluntary community agencies and services.

While encompassing a wide range of situations in which the child warrants protection, provincial child welfare statutes provide no guidance concerning whether these provisions or those of the Criminal Code are to be invoked. Even within specific jurisdictions, it is evident that policies which are said to have been established are inconsistently followed. Likewise, the provincial child wel-

fare statutes do not specify what is to be undertaken when the situation and needs of a sexually abused child are being assessed. With respect to these issues, we believe that all provincial child welfare statutes should be reviewed and, where required, amended to provide more clearcut guidance concerning what is to be undertaken in the assessment of sexually abused children and in specifying the review procedures to be followed to assure that these standards are being met.

Sharply contrasting approaches have evolved in the administration and operation of different child protection services which have markedly different consequences in relation to affording assistance and protection for sexually abused children. In relation to the two main child protection intervention approaches, relying respectively on the terms of child protection legislation or the sexual offences in the *Criminal Code*, it was found where charges were laid that:

- Initial assessments were more promptly undertaken.
- More children received medical examinations.
- There was broader consultation with other helping services.
- More interviews were held with victims, their mothers and other children in the family.
- More victims were counselled and treated.

The Committee considered whether the statutory authority under which child protection services function should specify child physical and sexual abuse assessment responsibility in addition to the broad concepts of neglect and protection. As documented in the Report, there can be no doubt, regardless of the intervention approach adopted, that more adequate assessment of cases of child sexual abuse is required.

Recommendation 31

The Committee recommends that Provincial Ministers responsible for Child Protection Services:

1. **Review provincial child welfare legislation to ensure the specification of assessment procedures to be undertaken on behalf of sexually abused children.**

2. **Introduce any appropriate amendments to this effect.**

3. **Develop a standard protocol for the collection of information, assessments to be conducted, findings to be recorded and other necessary procedures (e.g., reporting, referrals, etc.).**

4. **Make this protocol widely available, particularly to those likely to have first contacts with sexually abused children and that instruction be provided in its appropriate use.**

Child Abuse Registers

Registers (or analogous record-keeping systems) are authorized by the child welfare legislation of eight provinces. On the basis of its research, the Committee found that:

- A sizeable proportion of cases of child sexual abuse known to the police, physicians and child protection workers was not reported to child abuse registers.
- Proportionately more minor than serious sexual offences were reported.
- Child protection workers had consulted registers in relation to only one in five cases which were open.
- Several provinces having registers had no formal procedures with respect to the periodic review of cases listed in the files of registers.

In relation to the reporting of child sexual abuse, provincial child abuse registers are clearly not being used to the extent or in the manner intended by legislators. The utility of their functions appears also to be severely limited as case catalogues, research aids or assessment tools.

Recommendation 32

The Committee recommends with respect to the procedures and operation of child abuse registers concerning the notification of child sexual abuse in provinces where these reporting systems have been established that:

1. **The Annual Conference of Provincial Directors of Child Welfare review the operation of these registers.**
2. **In each province, the Department of the Attorney General and the Department responsible for Child Protection Services review the legal aspects of procedures concerning the entry of names, notification, expungement and exchange of information between provincial registers.**
3. **Provincial Child Abuse Registers be discontinued unless they can be realigned as a more effective means of providing protection for sexually abused children and youths.**

In the Committee's judgment, the alternatives are clear: either the registers must become effective means of identifying child sexual abuse, or they must be scrapped in favour of more effective procedures to provide protection for these children. The current operation of the registers is both inefficient and ineffective and does little to assist and protect most children who are sexually abused.

Criminal Injuries Compensation Boards

In each province and territory (except Prince Edward Island), there is an administrative board whose function is to provide compensation to innocent victims of violent crime. In recent years, about one in 22 of the compensation

awards made by these boards has been to victims of sexual assaults. These payments are generally small and in some jurisdictions enduring emotional and psychological harms are considered non-compensable.

The Committee believes that the existence and purpose of criminal injuries compensation boards must become generally better known to Canadians and, specifically in relation to child sexual abuse, that the main helping services must be better informed about the services offered by these boards as a means of providing assistance for young victims and their families.

The Committee's research has documented that the principal risks to sexually abused and assaulted children are the emotional and psychological harms which may be sustained, in some instances, having serious long-term consequences for these young victims. In relation to the enabling legislation concerning criminal injuries compensation boards in each jurisdiction, we believe these provisions should be amended to provide explicitly that the pain and suffering experienced by victims of sexual abuse and assaults be recognized as a basis for awarding compensation and that the federal-provincial cost-sharing arrangements should also be amended with respect to providing funding for the compensation of victims of sexual offences in the *Criminal Code*.

Recommendation 33

In co-operation with the Department of Justice, the Department of National Health and Welfare and Provincial and Territorial Governments, the Committee recommends that the Office of the Commissioner:

1. **In conjunction with Recommendation 2 relating to the undertaking of a national program of public education and health promotion, launch a vigorous campaign to inform citizens of the existence and purpose of Criminal Injuries Compensation Boards. This campaign should involve both the communications media and the police, hospitals, child welfare agencies, and other helping services.**

2. **Review the funding of criminal injuries compensation programs and, where appropriate, recommend that the federal and provincial levels of support be increased in order to provide a more appropriate level of compensation for victims of sexual offences.**

Recommendation 34

In relation to the enabling provincial legislation for criminal injuries compensation boards in each jurisdiction, the Committee recommends that this legislation be amended to provide explicitly for compensation for physical and emotional pain and suffering to the victim, in order to ensure a more appropriate level of compensation for victims of sexual offences.

6. Information Systems

The Committee firmly believes that having adequate information concerning the operation of existing programs constitutes a requisite foundation if more effective services are to be developed. In this regard, the Committee endorses the unimplemented recommendations of several earlier federal inquiries.

On the basis of its review, the Committee concluded that existing official statistical reporting systems (police, homicides, corrections, disease classification, child protection services) are virtually worthless in serving to identify the reported occurrence and circumstances of child sexual abuse. Without exception, all of these statistical reporting systems are so seriously flawed that they do not provide even rudimentary information about the victims of sexual offences, whether they are children, youths or adults.

There are no provincial or national statistics of how many sexual offences against children have been investigated by the police. Accurate statistics in this regard are virtually non-existent among child protection services. The system of medical classification of injuries fails to identify the major types of sexual assaults committed against victims. The available statistics on sentencing do not permit judges to be able to assess the efficacy of their decisions imposed upon convicted child sexual offenders. Official reporting systems also contain significant omissions about those offenders who are deemed to be among the most dangerous criminals in the country, many of whom have been convicted of sexual offences against children.

In light of these deficiencies, it is hardly surprising that at the present time we have a very imperfect understanding of the officially reported occurrence of sexual offences against children. Given even the lowest estimates of the extent of child sexual abuse in Canada, the problem is a matter of grave public concern. Until more reliable and comprehensive information is available on a continuing basis, it will remain a matter of conjecture how many Canadian children who are sexually assaulted are known to and served by public agencies.

Vital information about the victims of sexual offences and the offenders committing these crimes is available in the records upon which these statistics are based. However, the collection of this type of information is precluded by the statistical reporting systems that are now in place. None of the existing reporting systems provides for an accurate listing of information in accordance with the specific sexual offences in the *Criminal Code*. The absence of comprehensive and accurate information, which it would be readily feasible to obtain, effectively precludes the documentation of the nature and adequacy of the protection afforded by existing sexual offences, or of the benefits that may be gained by amendments made to the criminal law. Without such basic information being available, the public effort is effectively blindfolded concerning the dimensions of these problems and concerning the steps that it may be feasible to take in order to prevent and limit the occurrence of these acts.

Official Crime Statistics

The *Uniform Crime Report Statistics* assembled by Statistics Canada from police forces across the country do not give information about the victims of crimes or their ages. No specific sexual offences are listed with these crimes being grouped under a few broad categories. The omission of information about victims in these statistics precludes the identification of those sexual offences that specify the elements of these crimes in relation to the age, sex and relationships of blood, marriage and positions of authority or trust. Because these fundamental types of information are missing in official crime statistics, this source can only be used as a baseline for documenting broad trends.

The current practices followed by the *Homicide Statistics Program* in the classification of related incidents and the relationships between victims and suspects may substantially under-report sexual assault child homicides. There is insufficient specification defining precisely what related acts were committed, over what period of time, or by whom relative to persons whom children knew or who were responsible for them. No annually updated and centrally maintained source of information is available for Canada about whether the persons who committed sexually related child homicides were involved after their release in committing further sexual offences against children.

There is no uniform system of *Corrections Statistics* for Canada. Each jurisdiction (federal, provincial and territorial) maintains its own means of assembling and classifying information about victims and offenders. Several provinces do not have central computerized systems permitting an efficient updating of the information available. Except by means of a direct manual search of the files of convicted offenders, there is no procedure available in Canada whereby an assessment can be made of: the number of convicted child sexual offenders; the sentences they received; their prior criminal records in relation to the ages and sexes of victims; and sexual recidivism (previous sexual offence convictions) against children.

The absence of fundamental information in official crime reporting systems constitutes a glaring omission about issues that deeply concern Canadians. In the Committee's judgment, these statistical information systems should be sharply revised to provide basic information about the victims of sexual offences and offenders with the results being published annually.

Recommendation 35

The Committee recommends that the Office of the Commissioner in conjunction with federal and provincial departments (including the Department of Justice, Department of National Health and Welfare, Statistics Canada, Department of the Solicitor General, Correctional Service Canada and National Parole Board in co-operation with their provincial and territorial counterparts and the Canadian Association of Chiefs of Police), establish an interagency body for the purpose of developing:

1. **Uniform System of Classification between existing systems of official crime statistics (Uniform Crime Report Statistics, Correctional Statistics, Homicide Statistics Program).**

2. **Standard Core of Information with respect to sexual offences which as a minimum includes: age and sex of the victims; type of association (as defined by the *Criminal Code*) between victim and offender; injuries sustained by the victim; sexual offences committed as specified by the *Criminal Code* and in relation to specific sexual acts involved; and, the age and sex of the offender and the offender's prior criminal record.**

3. **National Reporting System with respect to the Standard Core of Information with the results published annually.**

4. **Biennial Review, in order to update and revise the National Reporting System.**

Disease Classification System

Having a disease classification system that identifies with reasonable accuracy medically examined cases of suspected and/or confirmed sexual abuse is an essential component of the services required for the protection of victims of these offences. In the absence of such a system, it is not possible to determine the extent of these medically reported conditions and, of greater importance for the well-being of the child, to assess the physical injuries and emotional harms sustained and their long-term impact on the child's health.

The existing classification system for the identification of sexual behavioural and character disorders is inconsistent with respect to the inclusion of some categories, but the exclusion of other major types of sexual behaviour. In this regard, it is an anomaly that while certain types of sexual behaviour and disorders are identified, no specific reference is made to persons committing incest or sexual assaults. Most of the existing categories are loosely defined and do not permit a reasonably uniform and consistent identification of behaviours and disorders.

In the Committee's view, most of these categories should be dropped and be replaced by a classification system which is inclusive with respect to the identification of the types of sexual acts for which persons may have a predisposition to commit and with respect to the acts committed. The main deficiency of the existing classification systems is that they do not permit the sufficient or complete identification of persons against whom sexual acts are committed and how they may be injured. The Committee's recommendations concerning the modernization of existing classification systems pertaining to sexually transmitted diseases are given in Recommendation 16.

The Committee recognizes that a review of the *International Classification of Diseases* (Ninth Revision) is being undertaken by the World Health Organization. This review is scheduled to be completed before the end of the 1980s. The Committee believes that the Government of Canada should not postpone consideration of the classification scheme until the international

review has been completed. There is no assurance that the international review will address the concerns identified by the Committee.

Recommendation 36

The Committee recommends that the Office of the Commissioner in consultation with the provinces, the Department of Justice, the Department of National Health and Welfare and Statistics Canada, appoint an expert advisory committee comprised of experts in nosology, pediatrics and the law to:

1. **Review the codes of the *International Classification of Diseases* (Ninth Revision) in order to determine how these do or do not permit the identification of diagnoses relating to persons, both children and adults, who have been sexually abused.**

2. **Develop a revised classification with respect to the identification of physical injuries and emotional harms associated with sexual assault.**

3. **Enlarge this system with respect to the identification of the events or persons associated with these assaults (e.g., incest), in relation to:**

   (i) the types of sexual acts committed;

   (ii) the circumstances or events under which the acts were committed;

   (iii) the type of association between the person committing the act and the patient; and

   (iv) review and make recommendations with respect to the identification of sexual abuse within the framework of medical services provided to: hospital outpatients; and patients examined and treated by physicians in private medical practice.

Recommendation 37

On the basis of the review and recommendations provided by the expert advisory committee, the Committee recommends further that the Office of the Commissioner in co-operation with the Government of Canada should:

1. **Implement the recommended revisions with respect to the classification by Statistics Canada of hospital morbidity and death statistics.**

2. **Consult with the provinces to review means whereby the classification of medical services provided on an ambulatory basis can be revised to identify statistically persons who have been sexually assaulted and injured.**

3. **Make representation to the international nosological review committee of the World Health Organization with respect to effecting amendments along these lines to be contained in the Tenth Revision of the *International Classification of Diseases.***

Child Protection Services

In its review of child protection services, the Committee found that the category *child sexual abuse* was commonly used as an inclusive term which

encompassed all forms of sexual offences committed against children and youths. This broad categorization is also used in provinces having central child abuse registers, often without further specification in relation to the sexual acts committed.

As the Committee's findings indicate, the sexually abused children served by child protection workers range from those who have been victims of acts of exposure to those who have been raped. The existing classification systems typically preclude consideration of the gravity of the sexual acts committed, assessment of the harms sustained by victims of different sexual acts or appraisal of which means of intervention may be more effective relative to the types of harms incurred.

The more precise identification of the types of child sexual abuse known to child protection services would afford better protection for these children by means of more clearly specifying risks, indicating the scope of the assessments required and providing a more effective basis upon which to determine the adoption of different intervention strategies.

Recommendation 38

The Committee recommends that the Office of the Commissioner in conjunction with the Department of National Health and Welfare, Department of Justice and provincial and territorial child protection services review the classification of sexual offences against children and youths used by child protection services with a view to establishing a common core of information concerning: the age and sex of the victim; the sexual acts committed; the injuries sustained by the victim; the association between victim and offender; the age and sex of the offender; and the disposition of the case, among others.

7. Research

Most Canadian research studies on sexual offences have represented the work of single disciplines. This separation has led to fragmented and unrelated bodies of research. The available research for Canada on sexual offences is seldom accurately informed about many of the main social, medical and legal issues, even as these pertain to the ages and sexes of victims, the sexual acts committed, the injuries sustained or the types of association between victims and offenders. The manner in which much of this research has been conducted precludes the use of the findings obtained to assess: the operation of the sexual offence provisions in the *Criminal Code*; the impact of legislative amendments; and the efficacy of different intervention strategies.

In relation to the need for comprehensive, fact-finding research concerning all aspects of sexual offences committed against young children, youths and adults, the Committee reiterates concerns that have been raised by several earlier federal inquiries. Such research is warranted and is feasible to undertake.

The research that has been undertaken has failed to provide sufficient or adequate documentation with respect to the important issues identified by these earlier inquiries.

The Committee unequivocally adheres to the principle of the right of scholarly and professional researchers to undertake research independent of intrusion by the state and that they should be able to publish findings freely, except with respect to honouring ethical research standards. This principle is not at issue. However, with respect to research pertaining to the operation of the criminal law, the Committee believes that rigorous research review procedures should be adopted in relation to studies pertaining to sexual offences. The Committee believes further that this principle could be effectively applied in other areas of research involving the operation of the criminal law.

In recent years, the Government of Canada has supported research on sexual offences by means of: direct research grants; contracts; block funding of services; federally established advisory bodies; and studies undertaken directly by federal departments. While the studies conducted by means of public funding may have served other purposes, their results have usually failed to provide a sufficient foundation upon which either to base the reform of the law or to mount the restructuring of needed services. In addition, it is clearly evident that a sizeable body of this research has been funded without benefit of sufficient and independent interdisciplinary review. As a result, the quality of much of the research work completed is wholly inadequate.

Recommendation 39

With respect to strengthening the research dealing with sexual abuse and sexual offences against children and youths in the *Criminal Code*, the Committee recommends that:

1. **The Office of the Commissioner be assigned responsibility to assess and make recommendations concerning research dealing with sexual abuse.**
2. **The scope of the research to be reviewed by the Office of the Commissioner include all research funded by the Government of Canada by means of: grants; contract; block funding; federal advisory bodies; and federal departments.**
3. **The Treasury Board be instructed not to approve funding for research dealing with these issues unless the general designs of the studies have been reviewed by the Office of the Commissioner.**

In undertaking its research on sexual offences against children and youths, the Committee identified a number of significant issues pertaining to the protection of the child or the management of offenders that warrant priority in the prospective funding of research studies. These issues include: injuries to sexually abused children; harms resulting from contracting sexually transmitted diseases; harms resulting from exposure to pornography; the widespread occurrence of acts of exposure; the treatment of convicted child sexual offenders; and the efficacy of sentencing practices in relation to reducing sexual recidivism. The justification for further research in relation to each of these issues is specified in the Report.

Recommendation 40

The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice and the Department of National Health and Welfare fund, directly or by other means, national research studies focussing on:

1. **Injuries to Sexually Abused Children, focussing on: the efficiency of different clinical programs in providing protection and optimum management for these children; the nature of long-term harms sexually assaulted children experience; and how they can most effectively be prevented, anticipated, detected and treated. The Committee regards this as a priority area for research funding. Investigation should be undertaken in conjunction with major hospitals across Canada specializing in providing treatment for sexually abused children.**

2. **Sexually Transmitted Diseases Contracted by Children, focussing on: the types of diseases contracted by children and the long-term risks likely to be sustained. This research should be undertaken by the Laboratory Centre for Disease Control, Department of National Health and Welfare in conjunction with provincial sexually transmitted disease control programs.**

3. **Long-term Effects of Exposure to Children of Pornography, focussing on: the immediate and long-term effects of exposure to pornography, including associated sexual assaults, particularly where it does and where it does not have subsequent negative effects and the factors that distinguish these situations.**

4. **Acts of Exposure, focussing on: acts of exposure which constitute the largest single category of sexual offences committed against children and youths. Research on these acts should be undertaken in co-operation with the Canadian Association of Chiefs of Police in which:**

   (i) persons reported to have exposed themselves to children and youths would be identified;

   (ii) a monitoring of any subsequently reported offences would be established;

   (iii) an evaluation be undertaken of the outcomes and effectiveness of different management procedures and sentencing practices in relation to reducing recidivism; and

   (iv) the classification of these acts in Uniform Crime Report Statistics be revised in order to permit the accurate identification of these acts on an ongoing basis.

5. **Treatment of Convicted Child Sexual Offenders, focussing on: the needs and treatment of convicted child sexual offenders. This study should include an assessment of the social, physical and mental health needs of these offenders and of all aspects of the treatment provided for them and the various outcomes. Research on a national basis should be undertaken by the Correctional Service Canada and provincial and territorial correctional services.**

6. **Recidivism of Convicted Child Sexual Offenders, focussing on: the long-term effects of different sentencing decisions and management practices. Research should be undertaken by the Department of Justice in conjunction with Correctional Service Canada and provincial and territorial correctional services.**

8. Juvenile Prostitution

The ingrained pattern of exploitation, disease and violence in the daily lives of juvenile prostitutes is unmistakable from the Committee's research findings. These youths are the cast-offs of Canadian society. In its research, the Committee found that:

- About half of the juvenile prostitutes had come from broken homes, two in three had completed less than one year of high school and three in four had run away from home at least once, some many times, before turning to prostitution.
- These youths came from families in all walks of life. While some had been sexually abused as children, their experience in this regard was no different from that of other Canadian children.
- Most had none or limited conventional job skills or work experience.
- Half of the juvenile prostitutes had turned their first trick (sold sex to a customer) when they were age 15 or younger. Most said they had done so because they could earn money easily.
- One in four was a frequent or heavy user of alcohol; one in three was a heavy drug user.
- A third did not routinely seek medical attention. A majority had at least once contracted a sexually transmitted disease.

For many of these youths, their work as prostitutes introduces them to a criminal way of life in which they become progressively more entangled. They face considerable risks of contracting serious diseases, of being severely physically injured and of being harshly exploited by pimps.

Education for Prevention

Education is potentially the most effective tool for stemming the spread of juvenile prostitution. The Committee's findings leave no doubt about the emotional and physical harms, the risks and the privations associated with street life.

In its Second Recommendation, the Committee calls for a national program of public education and health promotion as an essential means of affording better protection for sexually abused children. There is an urgent need for this national program to focus upon the risks — physical, health, emotional and social — involved for youths who become prostitutes. It is essential that both parents or guardians and youths be fully informed about the actual conditions and risks associated with the street life of young prostitutes.

Recommendation 41

In conjunction with the national program of public education and health promotion specified in Recommendation 2, the Committee further recommends that special educational programs be developed

drawing upon the findings of this Report documenting the conditions and risks associated with juvenile prostitution, and that these special educational programs be made available to parent-teacher associations and to schools, and by means of educational television.

Social Service Initiatives

While most of these youths have at one time been in contact with social services or enforcement agencies, except for seeking assistance such as medical care which they deem essential to continuing their work as prostitutes, few seek out other helping services. The programs which might assist them are largely mistrusted, regarded as useless, or are ignored.

No attempt to rehabilitate young prostitutes is likely to succeed unless it focusses attention on the need of these youths to alter their attitudes toward themselves and their way of living. Especially tailored helping programs are required which can provide these youths with acceptable job or trade-related skills. Such programs, if successful, would make it more financially feasible for these youths to get off the street. Programs having these objectives are vital prerequisites for the kind of action that is required to assist juvenile prostitutes to start a new life, one in which they have a perception of themselves as persons capable of living and working in a manner that is personally fulfilling, socially accepted and free of unacceptable risk to their health and safety. Despite the difficulties involved, the Committee believes that government at all levels has the unmistakable obligation to take positive steps in order to accomplish these objectives.

Recommendation 42

The Committee recommends that Provincial Child Protection Services develop special programs geared to serve the needs of young prostitutes and to identify the early warning signs of troubled home conditions warranting the provision of special services.

Recommendation 43

The Committee recommends that the Office of the Commissioner in conjunction with other branches of the Government of Canada establish support for special multi-disciplinary demonstration programs (child protection, police, education, medical and youth job training services) for five years (renewable) designed to reach and serve the needs of these youths, focussing upon: affording immediate protection; counselling; and education and job training.

Strengthening Enforcement Services

There is no doubt that existing legal provisions do not accord with the realities of juvenile prostitution and that the criminal law must be substantially

amended to provide the nation's police forces with the necessary legal means to enable them to control and reduce the sexual exploitation of youths by means of prostitution. In addition to amending the criminal law, however, it is evident that, in light of their other enforcement responsibilities, most Canadian police forces have insufficient manpower to assign officers to the lengthy task of assembling the evidence requisite for the laying of charges against pimps. While such investigations are demonstrably feasible, each may entail several months of police investigation.

In order for legal sanctions against young persons exploiting juvenile prostitutes to be effectively implemented, it is essential to have police officers who are especially trained and experienced in regard to these investigations and to provide sufficient resources enabling them to undertake adequately these assignments. Enforcement services must be considerably strengthened in order to permit them to succeed in laying charges against clients and pimps who exploit juvenile prostitutes.

Recommendation 44

The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice and the Department of the Solicitor General establish with the provinces a special federal-provincial cost-sharing program to provide specific support to municipalities enabling them to establish special police force units, having primary responsibilities for:

1. **Investigation and laying of charges against the clients of young prostitutes.**
2. **Investigation and charging of pimps working with young prostitutes.**

Soliciting for the Purpose of Prostitution

In its research involving young prostitutes, the Committee found that:

- One in three had been before a family or social welfare court.
- Two in five had been found delinquent by a juvenile court.
- One in seven had been charged (at least once) with soliciting; one in 10 had been convicted of this offence.
- These youths had been charged, on average, with 1.3 offences, other than for soliciting.

The amelioration of the tragic plight of juvenile prostitutes lies chiefly in the implementation of social rather than legal initiatives. We believe that young prostitutes can be helped by more effective social intervention and by the development of programs aimed at reintegrating them into the mainstream of society. However, such social initiatives are most frequently rendered useless because they are not sought out by these youths and because viable means of intervention are currently lacking.

There are no effective means either in federal or provincial legislation of holding these children and youths. There are no effective means of bringing these children and youths into situations where they can receive guidance. There are no effective means of stopping the demonstrated harms that these children and youths are bringing upon themselves.

For these reasons, the Committee believes that the implementation of criminal sanctions against these children and youths must be made a legal possibility by creating an offence in order that social intervention can take place.

There is no desire on the part of the Committee to affix a criminal label to any juvenile prostitute. We believe, however, that in order to bring these children and youths into situations where they can receive guidance and assistance, it is first necessary to hold them and the only effective means of doing this is through the criminal process. Accordingly, the Committee concluded that it is necessary to have a specific criminal sanction prohibiting children and youths engaging in prostitution. This sanction is a complementary prohibition to that recommended by the Committee against the customers of juvenile prostitutes. Together, these sanctions would constitute a clear legislative commitment that juvenile prostitution has no place in Canadian society.

Recommendation 45

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **Every young person who offers, provides, attempts or agrees to offer or provide for money or other consideration to engage in a sexual act is guilty of a summary conviction offence.**

2. **For the purpose of this section, "young person" means a person who is under 18 years of age.**

While the Committee is under no illusion that merely amending the law is an adequate or realistic response to juvenile prostitution, it does consider that the law has an important role to play in deterring and punishing those who sexually exploit young persons in this manner and in proclaiming the patent unacceptability of "sex for pay" where young persons are concerned.

In its research, the Committee found that:

- While most of the customers of juvenile prostitutes were males, 3.1 per cent had a regular female clientele. Half had been approached at least once for their services by a woman.
- Most of the tricks were middle-aged males who came from all types of social backgrounds.
- Three in four youths worked as prostitutes on a year-round basis.
- Of the young prostitutes interviewed, only one in 10 had ever been convicted of this offence. The reason is clear: juvenile prostitutes do not find it

necessary to be "pressing or persistent" in order to secure clients for their services. There are many more customers willing to pay for their services. Most of the prostitutes interviewed said that they would only take the risk of actively propositioning prospective clients when they had yet to attain their daily quota.

The current offence of soliciting for the purpose of prostitution in the *Criminal Code* is not effective in deterring young prostitutes from working on the streets or in deterring tricks from seeking their services. While the requirement that a prostitute be "pressing and persistent" in his or her solicitations is relevant to the public nuisance aspect of prostitution, it is clearly irrelevant to society's more compelling interest in deterring and punishing the exploitation of young persons by way of prostitution. The criminal sanctions recommended by the Committee are against the buying of sexual services from young persons as well as the provision of such services by youths. These proposed sanctions would accord more with the realities of juvenile prostitution than the existing requirement that the juvenile prostitute's conduct must be "pressing and persistent".

The tragic consequences of a life of prostitution for young persons are extensively documented in the Committee's Report. These serious harms justify the imposition of a criminal sanction against the customers of young prostitutes. Depending on the age of the young person and the nature of the sexual act engaged in, the customer of a young prostitute could also be charged with one of the sexual offences against children in the *Criminal Code*.

Recommendation 46

The Committee recommends that the *Criminal Code* be amended to provide for a separate offence in the following terms:

1. **Every one who offers, provides, attempts or agrees to offer or provide, money or other consideration to a young person for the purpose of engaging in a sexual act with, against, or upon such young person, is guilty of an indictable offence and is liable to imprisonment for two years.**
2. **For the purpose of this section, "young person" means a person who is under 18 years of age.**
3. **It is no defence to a charge under this section that the accused believed the person to be 18 years of age or older.**

Publicizing Clients' Names

In general, the law does not prohibit the public identification of persons convicted of crime, including those who are convicted of soliciting the services of young prostitutes. On the basis of its review of reports published for one year in 34 newspapers across Canada, the Committee found that in practice while the names of persons convicted of other crimes, such as robbery or theft, were given prominence in the media, this was seldom done in relation to persons convicted of soliciting prostitutes.

The publishing of the names of persons convicted of soliciting young prostitutes would serve as a strong contributory deterrent to persons inclined to seek the sexual services of juvenile prostitutes. The information given to the Committee by these youths leaves no doubt that most of their customers would not wish to have their identities known to their families or publicly as persons who had used the sexual services of juvenile prostitutes.

Recommendation 47

The Committee recommends that the Office of the Commissioner in conjunction with the national and provincial associations for the public media mount a program of giving prominent publicity to the names of persons convicted of soliciting juvenile prostitutes who are under age 18.

Procuring and Living on the Avails of Prostitution

The role played by pimps in introducing and coercing young females into a life of prostitution, and of locking them into this life by way of drugs, violence and threats of violence, is clearly documented in the Committee's research.

- One third of the female juvenile prostitutes admitted that they were working (or had previously worked) with pimps. Because of the girls' fear of their pimps, it is evident that this is a sharp under-estimate of this practice.
- Following their initial contacts with these men, one in four girls had been threatened or beaten; half had been immediately sent to work on the street.
- Of the earnings' quotas established by pimps, female juvenile prostitutes were repaid about a seventh of what they actually earned from customers.
- Four in five girls who had worked for pimps had been beaten, and in some instances, seriously injured, by these men.

The parasitic relationship between pimps and the young prostitutes in their employ is an intolerable form of child abuse. It warrants the application of effective legal sanctions against these exploiters of the young. The pimp cultivates and exploits the prostitute's vulnerabilities — her low self-esteem, her loneliness on the street and her need for love and protection. The oppressive social environment in which young prostitutes are compelled to work, and which the pimp actively engenders, robs these young persons of their human dignity and of opportunities for pursuing a more healthful and constructive way of life. The response of the criminal law to this egregious exploitation of the young must be certain and severe.

Our research has identified a number of social facts about juvenile prostitution which can serve as a basis for strengthening the protection afforded to young persons by the offences of "procuring" and "living on the avails of prostitution". Although some of the procuring offences apply only to the procuring of a person to have illicit sexual intercourse with another person, our research reveals that the act of sexual intercourse is only one of many sexual acts which

young prostitutes are procured to perform. The Committee recommends that the *Criminal Code* be amended accordingly.

In light of the Committee's finding that some pimps have only one prostitute working for them (and, in many cases, living with them), the Committee recommends that the presumption be widened to provide that evidence that a person lives with or is habitually in the company of a prostitute or prostitutes is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution. These reforms would materially strengthen the impact of the *Criminal Code* in this context and would better correspond to the modern realities of juvenile prostitution in Canada.

The limitation period for prosecution and the corroboration requirement relating to the offences of "procuring" are neither necessary nor appropriate in the modern context of juvenile prostitution. The Committee sees no reason for requiring a prosecution to be commenced within one year after the time the offence is alleged to have been committed. Limitation periods for the prosecution of indictable offences are highly exceptional in Canadian criminal law: the importance of society's interest in deterring and punishing this exploitation of young persons argues strongly against any procedural limitation of this kind. In this regard, the Committee adheres to its general principle that the credibility of a young victim of sexual abuse should be a matter of weight to be decided by the court and should not be a matter of presumed unreliability.

With respect to the sentences that should be available against individuals who procure young persons to engage in sexual acts with another person, or who live on the avails of the prostitution of young persons, the Committee considers that deterrence and denunciation must be the paramount sentencing considerations. The cold-blooded nature of the pimp's conduct, and its often life-destroying implications for the young prostitutes who do his bidding, should entail a mandatory sentence of imprisonment. The Committee can conceive of no factors which could possibly mitigate the severity of this form of exploitation of the young.

The conduct of the pimp towards young prostitutes is premeditated, persistent and often brutal; the consequences of this relationship for young prostitutes are invariably oppressive and dehumanizing. Parliament has seen fit to prescribe severe sanctions against persons convicted of grave sexual offences. In the Committee's judgment, it can scarcely be argued that the procurers of young prostitutes pose any less of a threat to the well-being of Canadian society or that the importance of deterring and denouncing the sexual procurement of young persons is any less compelling. The Committee recommends that a sentence of 14 years' imprisonment, with a minimum mandatory sentence of two years' imprisonment, be prescribed for persons convicted of procuring or of living on the avails of the prostitution of a person who is under 18 years of age.

Recommendation 48

The Committee recommends that:

1. **The phrase "illicit sexual intercourse" in section 195(1)(a), section 195(1)(b), and section 195(1)(i) of the *Criminal Code* be amended to read, "illicit sexual intercourse or any other sexual act".**

2. **The phrase "habitually in the company of prostitutes" in section 195(2) of the *Criminal Code* be amended to read, "habitually in the company of a prostitute or prostitutes".**

3. **Section 195(3) of the *Criminal Code* be repealed.**

4. **Section 195(4) of the *Criminal Code* be repealed.**

5. **Section 195(1) of the *Criminal Code* be amended to provide for a sentence of 14 years' imprisonment, with a minimum mandatory sentence of two years' imprisonment, for an accused who is convicted of procuring or of living on the avails of the prostitution of a person who is under 18 years of age.**

9. Pornography

The Committee was asked to determine the extent of the making of child pornography and examine the accessibility of pornography to children. The legal regulation of these two areas has both federal and provincial aspects. The making, distribution, sale and importation of child pornography are matters which fall primarily within the legislative competence of Parliament. The question of access by children to pornographic materials is a matter which, to date, has been regulated through the operation of a small number of municipal by-laws authorized at the provincial level.

The federal *Criminal Code* does not contain a specific offence relating to making, distribution or sale of child pornography. This behaviour is, however, indirectly proscribed by the various sexual offences in the *Criminal Code* and by the *Criminal Code* provisions relating to obscene publications. The *Customs Tariff* prohibits the importation into Canada of books or visual representations of an "immoral or indecent" character and the *Customs Act* authorizes the seizure and forfeiture of any such materials that are unlawfully imported. These statutory powers are supplemented by provisions in the *Canada Post Corporation Act* pertaining to the use of the mails. In the area of electronic broadcasting, the Canadian Radio-television and Telecommunications Commission (C.R.T.C.) has plenary regulatory authority over radio, television, cable television and pay television, and this includes the authority to establish limits on the kinds of sexually explicit representations that may legitimately be broadcast.

The provinces and territories have a complementary regulatory role in this context. The use of a child by his or her parent or guardian in the making of a pornographic depiction would almost certainly render the child "in need of pro-

tection" under the child welfare laws of each province and territory. With respect to the access by children and youths to pornographic materials, the provinces may regulate, by way of classification and other means, the public exhibition of films. A small number of municipalities have also enacted by-laws regulating the accessibility to children of pornographic materials in retail outlets, under provincial enabling legislation.

The Making, Distribution, Sale and Importation of Child Pornography

On the basis of its research, the Committee found that:

- None of the extensive sources of information drawn upon by the Committee had positive and confirmed knowledge of the *production of child pornography* for *commercial distribution* in Canada.
- The *commercial distribution of child pornography* within Canada is virtually non-existent. The attempted ventures have been small, without exception unsuccessful, and relatively promptly identified by enforcement services.
- The two main sources of child pornography in Canada are:

(i) Its importation by means of matter smuggled into the country and by means of the postal system.

(ii) Its individual production for private use or for small group exchanges.

Child pornography is a direct product of child sexual abuse. It comes into existence, and can only come into existence, through the base and coldly premeditated exploitation of a young person's sexual vulnerability.

- Child pornography is produced directly through the sexual abuse of young persons.
- Child pornography constitutes a permanent record of a child's sexual exploitation and the harm and humiliation to the child are exacerbated by the circulation, distribution or sale of such materials.
- Materials which depict children engaged in sexual conduct are often solicited by adults who use the materials to persuade other children to engage in similar conduct or who are themselves child molesters.
- The importation, circulation, distribution or sale of child pornography provides economic and other motives for the continued production of such materials and, in effect, guarantees additional child sexual abuse.

The existing *Criminal Code* framework relating to obscene publications is inadequate to deal with the special circumstances attending the making and distribution of child pornography. The general definition of obscenity does not reflect the state's particular and more compelling interest in prosecuting and punishing those who promote the sexual abuse of children in this manner. The definition of an "obscene publication" in the *Criminal Code* pertains to the

overall content of the publication, rather than to the circumstances of its production. In reference to child pornography, it is the circumstances of its production, namely, the sexual exploitation of young persons, which is a fundamental basis for proscription.

The availability of child pornography constitutes a message to the consumers of this matter that children are available for these purposes. Where a young person has been used in the making of visual pornographic material, it is irrelevant whether some view the material as having literary, artistic or aesthetic value. Plainly, the offences relating to obscene publications are based on different policy considerations than those which operate in the context of child pornography.

There is a need for explicit and severe legal sanctions against persons involved in the making, distribution, sale or importation of child pornography involving the *visual* depiction of explicit sexual conduct of persons under the age of 18. "Explicit sexual conduct" includes any conduct in which vaginal, oral or anal intercourse, bestiality, masturbation, sado-masochistic behaviour, lewd touching of the breasts or the genital parts of the body or in which the lewd exhibition of the genitals occurs or is depicted.

The Committee's recommendations concerning child pornography are restricted to *visual* pornographic depictions of persons under the age of 18. Pedophilic literature and visual pornographic depictions involving persons 18 or older would be subject to the general obscenity provisions of the *Criminal Code*. In the Committee's judgment, a special child pornography statute attacks not the legitimate expression of ideas, but rather a form of criminal conduct that is clearly inimical to the well-being of young children and youths.

Recommendation 49

1. The Committee recommends that the *Criminal Code* be amended to include the following provisions:

(i) Every one who:

(a) uses, or who induces, incites, coerces, or agrees to use a person under 18 years of age to participate in any explicit sexual conduct for the purpose of producing, by any means, a visual representation of such conduct;

(b) participates in the production of a visual representation of a person under 18 years of age participating in explicit sexual conduct;

(c) makes, prints, reproduces, publishes, distributes, circulates, or has in his or her possession for the purposes of publication, distribution, or circulation a visual representation of a person under 18 years of age participating in explicit sexual conduct; or

(d) sells, offers to sell, receives for sale, advertises, exposes to public view, or has in his or her possession for the purpose of sale a visual representation of a person under 18 years of age participating in explicit sexual conduct,

is guilty of an indictable offence and is liable to imprisonment for 10 years.

(ii) Every one who knowingly, without lawful justification or excuse, has in his or her possession a visual representation of a person under 18 years of age participating in explicit sexual conduct, is guilty of an indictable offence punishable on summary conviction.

(iii) For the purpose of sections (i) and (ii) above,

(a) a person who at any material time appears to be under 18 years of age shall, in the absence of evidence to the contrary, be deemed to be under 18 years of age;

(b) "explicit sexual conduct" includes any conduct in which vaginal, oral or anal intercourse, bestiality, masturbation, sado-masochistic behaviour, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals occurs or is depicted;

(c) "visual representation" includes any representation that can be seen by any means, whether or not it involves the use of any special apparatus.

(iv) In any proceeding under this Part, where a court is satisfied that a matter or thing is a visual representation referred to in section (i) or (ii), the court shall order the matter or thing and any copies thereof, to be forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

2. The Committee recommends that the relevant definitional, seizure and forfeiture provisions in the *Customs Tariff, Customs Act*, and *Canada Post Corporation Act* be amended to conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.

3. The Committee recommends that the *Broadcasting Act*, and regulations made thereunder, be amended to conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.

4. The Committee recommends that the provincial Departments of the Attorney General, in conjunction with the federal Department of Justice, develop criteria for film and video classification which conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.

Strengthening Federal Enforcement Services

There is a need to restructure and strengthen the capacity of federal enforcement services to detect and seize the child pornography that is brought illegally into Canada. The central computerized information system that has been established is not an effective means of identifying persons who may be habitual smugglers of child pornography. This failure is significant: our findings indicate that persons who sexually molest children are likely also to purchase and possess child pornography and to seek to involve children and youths in the making of *visual* representations of explicit sexual conduct.

Recommendation 50

The Committee recommends that, in conjunction with the Office of the Commissioner, the federal Department of Justice in consultation with Revenue Canada and the Department of the Solicitor General review the operation of the central registry of Customs seizures with a view to assuring its efficient operation as a means of identifying the importers of child pornography.

On the basis of information assembled by the Committee, it is evident that the use of customer mailing lists of distributors of child pornography which are routinely seized by foreign enforcement agencies is an even more effective method of identifying persons who illegally import child pornography. Seized mailing lists instantly identify the persons whose use of the postal system may warrant official scrutiny.

The Committee recognizes that prudence and discretion must be exercised by law enforcement officers before they undertake to search a citizen's home or place of business. Legal safeguards have been enacted in federal statutes and in the *Canadian Charter of Rights and Freedoms* to prevent abuse of the authority of the police to conduct searches and seizures. In the Committee's judgment, however, an active search and seizure policy is warranted, where it will serve to identify the consumers of illegally imported child pornography.

Where foreign police agencies provide the R.C.M.P. with subscriber mailing lists involving child pornography, the circumstances exist to justify thorough investigations, including searches and seizures. Were the R.C.M.P. to make it known publicly that it was actively seeking the co-operation of foreign enforcement agencies in obtaining mailing lists, and that it intended to conduct a rigorous investigation of any suspected case of unlawful postal importation of child pornography so discovered, it is likely that the prospect of being discovered, of having one's residence searched and of facing prosecution and conviction would dissuade a significant number of persons from soliciting child pornography through the mail.

Recommendation 51

The Committee recommends that the federal Department of Justice in conjunction with the Department of the Solicitor General, Revenue Canada and the Office of the Commissioner:

1. **Announce publicly, including notices posted at entry points and a statement contained in Customs Declaration Forms, that the R.C.M.P. is actively seeking the co-operation of foreign enforcement agencies to obtain information concerning the producers and distributors of child pornography, and that the R.C.M.P. intends to conduct a rigorous investigation of any suspected case of unlawful importation of child pornography.**

2. **Instruct the R.C.M.P. to seek out, where possible, the mailing lists of all major commercial producers and distributors of child pornography, and to undertake thorough investigations on the basis of the information so provided.**

Access by Children to Pornographic Materials

The distribution and sale of pornography is a thriving and growing enterprise; moreover, it is an enterprise supported by large numbers of Canadians. There is no evidence that this trend will abate. On the contrary, the Committee's research strongly suggests that the consumption and sale of these materials will increase in the future.

Despite the widespread purchase of pornography, there is also an urgent public concern about the open display of these materials and about their ready accessibility to young persons. There is considerable agreement in Canada that an age limit should be established in relation to the purchase of pornography and that pornographic materials should not be displayed in a manner which makes them accessible to children. In its research, the Committee found that:

- 540 different pornographic magazines were being sold across Canada.
- The sales of pornographic magazines audited by the Audit Bureau of Circulation grew by 327 per cent between 1965-80.
- The content analysis of the single issues of 11 nationally distributed magazines (having an annual Canadian distribution of over 14 million copies) indicates that there is extensive depiction of sexually explicit behaviour and acts in these publications.

  There is a progression from photographs and text to cartoons and advertisements involving the depiction of children and youths. Ten per cent of the sexually oriented advertisements featured children and youths.

- Of retail outlets surveyed selling pornographic magazines, six in seven displayed these magazines well within the reach of younger children. Most had these magazines interspersed with popular publications; in about four in five retail outlets, the covers of the pornographic magazines were either fully exposed or only partially hidden.
- Three in five males and one in three females said that they had bought pornography at least once during their lives.
- Of persons who had bought pornography, two in five males and one in five females had made their first purchases by age 17 or younger.
- Over three in four persons who did not oppose pornography altogether felt that only persons age 18 and older should be permitted to purchase this material.

In relation to the operation of municipal by-laws designed to regulate the sale and accessibility of pornography to children, the Committee found that few municipalities had enacted by-laws of this kind. Further, some of these by-laws have been held to be legally invalid due to their lack of specificity in identifying the kinds of pornography sought to be regulated.

In the Committee's judgment, effective regulation of the access by children to pornographic materials can be achieved only through legislation which is national in scope, enacted under Parliament's constitutional authority to enact laws in relation to criminal law and for the "peace, order, and good government of Canada". Federal statutes regulating the sale of tobacco products to minors and the sale of products hazardous to children (for example, chemically-based products which may be used for "glue-sniffing") have been upheld as valid exercises of the federal criminal law power, as have the provisions of the *Juvenile Delinquents Act*.

In the Committee's judgment, the documented national dimensions of the problem of access by children to pornographic materials requires the enactment of a federal statute "to deal with a genuinely new problem which did not exist at the time of Confederation and clearly cannot be put in the [provincial legislative] class of 'Matters of a merely local or private nature'". In light of the strong concerns expressed by Canadians about the ready access by children to pornographic materials, the Committee considers that provisions should be enacted to prohibit the accessibility and sale of pornography to young persons.

The prohibition against access by children to pornographic materials which the Committee recommends would apply to any *visual* materials which depict sexually explicit conduct involving vaginal, oral or anal intercourse, bestiality, masturbation, sado-machochistic behaviour, lewd touching of the breasts or the genital parts of the body or the lewd exhibition of the genitals.

Recommendation 52

The Committee recommends that the *Criminal Code* be amended to prohibit the accessibility and sale of visual pornographic materials to young persons under 16 years of age. The amendments should incorporate the following elements:

1. **A detailed specification of the range of visual pornographic materials sought to be prohibited, in terms both of content and visual medium. Magazines, video cassettes and "sex aids" should be expressly included.**

2. **Visual pornographic materials which are offered for sale in commercial outlets must be covered and sealed.**

3. **No person shall knowingly sell, display or offer to sell such visual pornographic materials to anyone under 16 years of age.**

For the purpose of sections (1), (2) and (3) above, "visual pornographic materials" includes any conduct in which vaginal, oral or anal intercourse, bestiality, masturbation, sado-masochistic behaviour, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals is depicted.

4. **Every one who contravenes these provisions is guilty of an offence punishable on summary conviction.**

Appendices

Terms of Reference

1. The Committee on Sexual Offences Against Children and Youths is appointed by the Minister of Justice and the Minister of National Health and Welfare to conduct a study to determine the adequacy of the laws in Canada in providing protection from sexual offences against children and youths and to make recommendations for improving this protection.

2. The Committee is asked to ascertain the incidence and prevalence of sexual abuse against children and youths, and of their exploitation for sexual purposes by way of prostitution and pornography. In addition, the Committee is asked to examine the question of access by children and youths to pornographic material. The Committee is asked to examine the relationship between the enforcement of the law and other mechanisms used by the community to protect children and youths from sexual abuse and exploitation.

3. The Committee will collect factual information on and examine *Criminal Code* sexual offences under related laws which either expressly refer to children and youths as victims or which are frequently committed against children and youths.

4. In particular, the following matters are to be examined:

   The elements of the offences with special attention to issues of age and consent and related considerations of evidence and publicity.

   The incidence and prevalence of sexual offences against children and youths in Canada. Where possible, comparisons are to be made with the incidence and prevalence of sexual offences in general.

   Whether such offences are likely to be brought to the attention of the authorities; whether they are likely to be prosecuted and, if prosecuted, are likely to result in convictions.

   The effectiveness of criminal sanctions and methods other than the application of criminal sanctions in dealing with the types of conduct involved in these offences.

5. The study is to be completed within two years from the time of establishment of the Committee, and its recommendations will be contained in a report which will be made public. Officials from the Departments of Justice and National Health and Welfare will be available for consultation and will provide any assistance the Committee may require for the purpose of facilitating its work.

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Sexual Offences Against Children in Canada, Two Volumes, Ottawa: Supply and Services Canada, 1984, 1314 pages.

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